

Hazard Mitigation Research Program

The Center for Urban and Regional Studies
The University of North Carolina
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A REVIEW OF FEDERAL PROGRAMS
PROVIDING DISASTER ASSISTANCE TO
COASTAL LOCAL GOVERNMENTS
FOLLOWING A HURRICANE

C. Luther Propst



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Preface

This document provides a review of sources and types of Federal assistance that may be available following a hurricane or severe coastal storm. Included is information on Federal programs that provide assistance or funds to local governmental units and, in more-abbreviated form, information about assistance that is available to individuals, businesses, families, and non-profit associations.

The introduction explains the procedure leading to the declaration of a major disaster or emergency, which in turn makes a variety of assistance programs administered through the Federal Emergency Management Agency available to local governments and individuals. The introduction also explains the procedure used to apply for disaster recover assistance.

Part I of the report describes the various Federal programs which provide assistance to local governments following a Presidential declaration of a major disaster or an emergency. These programs are administered through the Federal Emergency Management Agency (FEMA).

Part II outlines Federal disaster assistance programs available without a Presidential declaration of a major disaster or an emergency, that are administered by a variety of Federal agencies. This includes programs related to emergency rescue, protection of property and disaster relief and recovery.

Part III describes Federal programs offering assistance to individuals, families, certain non-profit associations, and businesses pursuant to a Presidential declaration of a major disaster or an emergency.

Appendix I contains Federal statutes which authorize Federal assistance to disaster-stricken communities and which govern the administration of

emergency management programs. It contains the Disaster Relief Act of 1974, 42 U.S.C.A. §§ 5121 to 5202; 23 U.S.C.A. § 125, which authorizes emergency relief for Federal-aid roads; section 1362 of the National Flood Insurance Act, 42 U.S.C.A. § 4103, which governs the purchase of insured property damaged substantially beyond repair by flood; and Title VII--Economic Recovery for Disaster Areas, Public Works and Economic Development Act of 1965, as amended (P.L. 93-288), which provides assistance for the economic recovery and replacement of essential facilities and services of a major disaster area.

Appendix II contains the regulations implementing the Federal disaster relief programs created by the Disaster Relief Act of 1974 and other disaster related statutes. It consists of three parts. The first (Part 205--Federal Disaster Assistance--of Title 44 of the Code of Federal Regulations) contains the regulations used by the Federal Emergency Management Agency to carry out the provisions of the Disaster Relief Act. This section includes regulations governing procedural requirements for public assistance, community disaster loans, private assistance programs, flood insurance requirements, and hazard mitigation requirements, among others. The second part contains the Emergency Relief Program regulations which implement the Federal disaster aid program for Federal-aid roads. The final section contains the regulations related to disaster assistance for crisis counseling and training promulgated pursuant to Section 413 of the Disaster Relief Act.

Appendix III contains a Glossary of frequently-encountered terms in the Federal natural disaster assistance parlance.

Appendix IV is a Bibliography of useful sources for local government officials confronting post-disaster recovery problems.

Introduction: Procedures for Obtaining Federal Disaster Assistance

Federal disaster assistance programs are designed to supplement local, state, and private resources when these resources are insufficient to alleviate hardship and to repair damage in the wake of a major disaster. The most important federal law dealing with disaster assistance is the Disaster Relief Act of 1974, Public Law 98-288, codified at 42 U.S.C. 5121 to 5202. The Disaster Relief Act authorizes a wide range of financial assistance and direct assistance programs to state and local governments and to the private sector. While other legislation has created a number of other disaster assistance programs in a variety of federal agencies, the Disaster Relief Act and the regulations adopted to administer it set the guidelines and procedures by which federal aid is distributed and vests the Federal Emergency Management Agency with primary responsibility for coordinating and providing disaster-related assistance. FEMA regulations determine federal responsibility, govern damage assessment, applications for assistance, the granting of assistance, and post-disaster hazard mitigation planning.

The Presidential Declaration

FEMA's disaster response procedures are set into motion by a Presidential declaration of an "emergency" or a "major disaster" as authorized by the Disaster Relief Act. An "emergency" is any natural disaster which calls for emergency federal assistance to supplement state and local efforts to avert the threat of a disaster or to protect lives, public health, and property. A "major disaster" is a natural event that causes damage of a sufficient severity and magnitude to warrant major federal assistance above and beyond emergency services. A major disaster, unlike an emergency declaration, provides for

recovery and reconstruction assistance.

FEMA keeps close track of potential disasters, such as the development and path of a hurricane. As the threat of a disaster increases and as disaster strikes, FEMA maintains contact with the Governor's office and the state agencies for emergency management within the area which might be affected. After an initial reconnaissance, local officials in a disaster-stricken community immediately report the nature and extent of damages to the state agency responsible for emergency management. This agency then advises the Governor on the seriousness of the situation; the Governor may declare a state of emergency, which puts the state's disaster relief and assistance program into operation, and directs state resources to meet disaster assistance needs. If it appears that the situation is of a severity or magnitude that exceeds state and local capabilities, the Governor can ask the President, through FEMA, to declare an emergency or a major disaster, which would set the Federal assistance program into action. Only the Governor or the Acting Governor can make this request.

Preliminary Damage Assessment

If the Governor asks for a Presidential declaration, state disaster officials will:

- survey the affected areas with local officials and with FEMA's regional disaster specialists if possible, to determine the extent of damage;
- estimate the type and extent of Federal assistance needed;
- consult with FEMA's Regional Director regarding eligibility requirements; and
- advise FEMA's Regional Director of the state's request for a Presidential declaration.

The Governor's request for a Presidential declaration will include a certification of reasonable state and local expenditures for disaster relief and an estimate of the Federal assistance required for the state and for each affected county. The Governor's request is addressed to the President and is submitted to FEMA's Regional Director, who evaluates the estimates of damage and assistance needs and makes a recommendation to the FEMA Director. The Director then recommends a course of action to the President, who issues the declaration and thereby sets in motion the process for providing Federal disaster assistance to various eligible public agencies, individuals, and businesses.

FEMA's Post-Disaster Procedures

Once the President declares an emergency or a major disaster, the Governor and FEMA's Regional Director sign a Federal-State Disaster Assistance Agreement which specifies how and for which areas Federal disaster relief will be made available. FEMA's Associate Director for Disaster Response and Recovery designates those counties and municipalities that are eligible for Federal disaster assistance and appoints another Federal official (usually FEMA's Regional Director) as the Federal Coordinating Officer (FCO). The FCO performs a number of functions:

1. Determining the types of assistance most urgently needed;
2. Coordinating all Federal disaster relief efforts;
3. Coordinating Federal activities with those of state and local agencies and private disaster relief organizations (such as the Red Cross and the Salvation Army);
4. Informing people in the community about the types of assistance available;
5. Setting up and operating disaster field offices;
6. Taking other actions, consistent with his authority; to help citizens and public agencies promptly obtain assistance for which they are eligible.

The FCO is usually supported by one or more deputies who are delegated to perform some of these functions.

FEMA sets up a temporary Disaster Field Office in the stricken area as a base for Federal disaster relief operations. The Disaster Field Office is usually located in conjunction with a similar field office operated by the State Coordinating Officer who is the primary liaison between the Federal Coordinating Officer and state and local officials. The location and telephone number of the Disaster Field Office is widely publicized to encourage applicants to visit or call when assistance is needed. The field representatives staffing these offices are responsible for providing assistance to disaster victims and for advising local and state agencies on eligibility requirements, surveying and reporting damage, and processing applications for Federal assistance. In addition to these agency representatives, the FEMA Regional Director may dispatch Emergency Support Teams to provide specialized counseling, to help operate the Disaster Field Office, and to temporarily supplement local and state emergency response and damage assessment efforts.

Federal disaster assistance programs fall into two general categories; individual assistance (for individuals, families, and businesses) and public assistance (for local and state agencies). FEMA disseminates information about available aid programs via local radio, television, newspapers, and pamphlets. FEMA will establish a Disaster Assistance Center in the disaster area to help individual victims get information and guidance from the various Federal agencies. At the Center, disaster victims apply for assistance from the various Federal programs that are discussed in later sections of the book. FEMA may also dispatch mobile teams to help persons in the area who lack access to the Disaster Assistance Center.

In addition to Operating the Disaster Assistance Center, which is mainly for providing individual assistance, FEMA and the state emergency management agency hold an applicant briefing for local and state officials to inform them of the public assistance available and of the procedures and eligibility requirements involved. Items covered at the briefing include:

1. Filing a Notice of Interest in receiving different types of Federal disaster assistance;
2. Preparing Damage Survey Reports (DSRs) to document damages and repair costs;
3. Filing a Project Application; and
4. Addressing special considerations, such as environmental assessments and opportunities for hazard mitigation.

The Notice of Interest (Figure 1) is basically a checklist on which local and state officials indicate the type of damage sustained by public facilities. It provides the basis by which FEMA schedules damage surveys.

Damage Survey Reports (Figure 2) document the extent of damages to different facilities, identify needed and eligible repairs, and assess in detail the costs of repairing or rebuilding them. The DSRs, prepared by a Damage Assessment Team consisting of Federal, state, and local authorities are submitted to FEMA and the state emergency management agency. The DSR is the basis for FEMA's approval of applications for public assistance. The Damage Assessment Team depends on local officials' damage assessments to measure the severity and magnitude of damage; it is therefore advantageous for the local government to maintain accurate property records and to conduct its own damage survey before the Damage Assessment Team arrives. Photographs, maps, and drawings are often included in the DSR to provide more complete descriptions and documentation.

Figure 1: FEMA Notice of Interest Form

FEDERAL EMERGENCY MANAGEMENT AGENCY DISASTER RESPONSE AND RECOVERY		Form Approved OMB No. 071-R0008	
NOTICE OF INTEREST <i>IN APPLYING FOR FEDERAL DISASTER ASSISTANCE</i>		FEMA DECLARATION NUMBER	
		DATE	
		FIPS NUMBER	
The purpose of this form is to list the damages to property and facilities so that inspectors may be appropriately assigned for a formal survey.			
REQUIREMENTS FOR FEDERAL DAMAGE SURVEYS			
A. DEBRIS CLEARANCE <input type="checkbox"/> On Public Roads & Streets including ROW <input type="checkbox"/> Other Public Property <input type="checkbox"/> Private Property <i>(When undertaken by local Government forces)</i> <input type="checkbox"/> Structure Demolition		F. PUBLIC UTILITY SYSTEMS <input type="checkbox"/> Water <input type="checkbox"/> Storm Drainage <input type="checkbox"/> Sanitary Sewerage <input type="checkbox"/> Light/Power <input type="checkbox"/> Other*	
B. PROTECTIVE MEASURES <input type="checkbox"/> Life and Safety <input type="checkbox"/> Health <input type="checkbox"/> Property <input type="checkbox"/> Stream/Drainage Channels		G. FACILITIES UNDER CONSTRUCTION <input type="checkbox"/> Public Facilities* <input type="checkbox"/> Private Non-Profit Facilities**	
C. ROAD SYSTEMS <input type="checkbox"/> Roads <input type="checkbox"/> Streets <input type="checkbox"/> Bridges <input type="checkbox"/> Culverts <input type="checkbox"/> Traffic Control <input type="checkbox"/> Other*		H. PRIVATE NON-PROFIT FACILITIES** <input type="checkbox"/> Educational <input type="checkbox"/> Medical <input type="checkbox"/> Emergency <input type="checkbox"/> Custodial Care <input type="checkbox"/> Utility	
D. WATER CONTROL FACILITIES <input type="checkbox"/> Dikes <input type="checkbox"/> Levees <input type="checkbox"/> Dams <input type="checkbox"/> Drainage Channels <input type="checkbox"/> Irrigation Works		I. OTHER (Not in above categories) <input type="checkbox"/> Park Facilities <input type="checkbox"/> Recreational Facilities	
E. PUBLIC BUILDINGS AND EQUIPMENT <input type="checkbox"/> Public Buildings <input type="checkbox"/> Supplies or inventory <input type="checkbox"/> Vehicles or other equipment <input type="checkbox"/> Transportation Systems <input type="checkbox"/> Higher Education Facilities			
<small>* Indicate type of facility. ** Provide name of the facility and of private non-profit owner.</small>			
NAME AND TITLE OF REPRESENTATIVE WHO WILL ACCOMPANY THE SURVEY TEAM			
NAME OF POLITICAL SUBDIVISION OR ELIGIBLE APPLICANT		COUNTY	
1		2	
BUSINESS ADDRESS			ZIP CODE
BUSINESS TELEPHONE (Area Code/Number)		HOME TELEPHONE (Area Code/Number)	
3			
APPLICANT'S AUTHORIZED REPRESENTATIVE		BUSINESS TELEPHONE (Area Code/Number)	
4			

FEMA FORM 90-49 (2/80)

Source: FEMA, 1981, Handbook for Applicants, p. E-1.

FEMA classifies damage that is eligible for public assistance pursuant to a declaration of a major disaster into seven categories of "permanent" work and two categories of "emergency" work (Table 1). A separate DSR is prepared for each category of work and for each damage site; separate DSRs are required for different categories of work at the same site.

Table 1: Categories of Public Assistance Available from FEMA

<u>Emergency Work</u>	<u>Permanent Work</u>
1. Debris Removal	1. Road or Street Systems
2. Emergency Protection	2. Water Control Facilities
	3. Public Buildings and Related Equipment
	4. Public Utilities
	5. Facilities Under Construction
	6. Private Nonprofit Facilities
	7. Other

A DSR does not constitute an approval of repair work or a commitment of Federal funds. It simply provides information on the extent of damages and estimated repair costs, which FEMA uses to approve or deny specific items requested in the Project Application.

The Project Application (Figure 3) is the formal request for aid that a local government or state agency submits to FEMA's Regional Director through the Governor's Authorized Representative or the state emergency management agency. The Project Application combines and summarizes the Damage Survey Reports for various repair projects for damaged public facilities. It is accompanied by the complete Damage Survey Report for each project listed.

Figure 3: FEMA Project Application Form

Form Approved
OMB No. 925-R0001

FEDERAL ASSISTANCE (PART I)		1. APPLICANT'S APPLICATION	2. PA SUPP	3. STATE APPLICATION IDENTIFIER	4. FEMA
5. TYPE OF ACTION <input type="checkbox"/> PREAPPLICATION <input checked="" type="checkbox"/> APPLICATION <small>(Mark appropriate box!)</small> <input type="checkbox"/> NOTIFICATION OF INTENT (ONI) <input type="checkbox"/> REPORT OF FEDERAL ACTION		OBLIGATION LOG NUMBER		6. DECLARATION DATE	
7. TITLE AND DESCRIPTION OF APPLICANT'S PROJECT (PL 92-288) Prior to DSR's attached as Part II to this application		8. FEDERAL EMPLOYER IDENTIFICATION NO.		9. FEDERAL GRANT NUMBER a. NUMBER: 830300 b. TITLE: Disaster Assistance	
10. AREA OF PROJECT IMPACT (Name of cities, counties, states, etc.)		11. ESTIMATED NUMBER OF PERSONS BENEFITING		12. TYPE OF APPLICATION A - New C - Revision E - Augmentation B - Renewal D - Continuation Enter appropriate letter	
13. PROPOSED FUNDING		14. CONGRESSIONAL DISTRICTS OF		15. TYPE OF CHANGE (For 12c or 12d)	
a. FEDERAL \$ 00 b. APPLICANT \$ 7 c. STATE \$ 00 d. LOCAL \$ 00 e. OTHER \$ 00 f. TOTAL \$ 00		a. APPLICANT b. PROJECT 16. PROJECT START DATE Year Month Day 17. PROJECT DURATION (Month)		A - Increase Duration F - Other (Specify) B - Decrease Duration C - Increase Duration D - Decrease Duration E - Continuation Enter appropriate letter	
18. ESTIMATED DATE TO BE SUBMITTED TO FEDERAL AGENCY		19. EXISTING FEDERAL IDENTIFICATION NUMBER		20. FEDERAL AGENCY TO RECEIVE REQUEST (Name, City, State, ZIP code) Federal Emergency Management Agency	
21. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		22. THE APPLICANT CERTIFIES THAT: a. To the best of my knowledge and belief, data in this application are true and correct; the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved. b. If required by OMB Circular A-98 this application was submitted pursuant to instructions thereon, to appropriate congressional and all relevant committees.		An application Records attached <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	
23. CERTIFYING REPRESENTATIVE a. TYPED NAME AND TITLE b. SIGNATURE c. DATE SIGNED Year Month Day 19		24. AGENCY NAME Federal Emergency Management Agency (FEMA)		25. APPLICATION RECEIVED 19	
26. ORGANIZATION UNIT Disaster Response and Recovery		27. ADMINISTRATIVE OFFICE Region 2		28. FEDERAL APPLICATION IDENTIFICATION	
29. ADDRESS		30. FEDERAL GRANT IDENTIFICATION		31. ACTION TAKEN	
31. ACTION TAKEN <input type="checkbox"/> AWARDED <input type="checkbox"/> REJECTED <input type="checkbox"/> RETURNED FOR AMENDMENT <input type="checkbox"/> DEFERRED <input type="checkbox"/> WITHDRAWN		32. FUNDING a. FEDERAL \$ 00 b. APPLICANT \$ 00 c. STATE \$ 00 d. LOCAL \$ 00 e. OTHER \$ 00 f. TOTAL \$ 00		33. ACTION DATE Year Month Day	
34. FEDERAL AGENCY ACTION		35. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)		36. STARTING DATE Year Month Day	
36. FEDERAL AGENCY A-98 OFFICIAL (Name and telephone no.)		37. REMARKS ADDED <input type="checkbox"/> Yes <input type="checkbox"/> No		38. ENDING DATE Year Month Day	

FEMA Form 90-4 (2/80) Standard Form 424 (Revised) Page 1 of 6 pages

Source: FEMA, 1981, Handbook for Applicants, p. G-1.

Figure 3: FEMA Project Application Form (continued)

39a. PART I (Continued)	FEMA Agreement No. _____	P.A. No. _____	Sup. No. _____
39b. Project Summary (Based on Part II of this application)			
	AMOUNT REQUESTED BY APPLICANT	AMOUNT APPROVED BY STATE	AMOUNT APPROVED BY FEMA
A. Debris Clearance			
B. Protective Measures			
C. Road Systems			
D. Water Control Facilities			
E. Public Buildings and Equipment			
F. Public Utilities			
G. Facilities Under Construction			
H. Private Nonprofit Facilities			
I. Other Damages (Not included in above categories)			
TOTAL			
40. Funding (please check)			
	APPLICANT REQUEST	STATE APPROVAL	FEMA APPROVAL
Small Project Grant (In-lieu Contribution)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Flexible Funding Grant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advance of Funds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Categorical Grant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Advance of Funds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
41. Approved by Governor's Authorized Representative			
<i>(Date Received)</i>	<i>(Date Approved)</i>	<i>(Signature)</i>	
42. Approved by FEMA			
<i>(Date Received)</i>	<i>(Date Approved)</i>	<i>(Signature)</i>	
43. Remarks (Reference application Part and Item Number as appropriate. Attach additional sheets when necessary).			
44. PART II - PROGRAM NARRATIVE			
<i>(Attach Damage Survey Reports (FEMA Form 90-52) to document fully and support this application)</i>			

The Project Application also provides the formal record of review and approval by FEMA and the state emergency management agency. It must be signed by the applicant's authorized representative. (See Figure 4). The application must be submitted to FEMA's Regional Director within 90 days of the Presidential declaration of a major disaster or within 30 of an emergency declaration. Local officials should keep in mind that, under current FEMA policy, the Federal government will only fund up to 75 percent of the eligible cost of repairs to public facilities.

Once a Project Application is approved and FEMA makes the various forms of public assistance available to the local government or state agency, FEMA maintains standards for project administration, which include project completion deadlines, progress reports, and cost overruns. In a community where an emergency has been declared, Federal assistance typically ends one month after the initial Presidential declaration. Where a major disaster has been declared, Federal assistance for emergency work typically ends six months after the declaration and Federal assistance for permanent work ends after 18 months. Recipients must submit progress reports if there are any delays that would make a project run past the deadline or if the recipient faces cost overruns. FEMA or other Federal and state agencies may conduct periodic inspections of selected projects to make sure that work is progressing in a timely fashion and according to the appropriate standards and procedures.

As work on a project ends, the recipient notifies the Governor's Authorized Representative, who arranges for federal or state personnel to make a final inspection of the work in each category of funding. The Final Inspection Report (Figure 5) documents the completion of work and is required for the recipient to be reimbursed for the cost of repairs. A project that does not exceed \$10,000 usually does not require a final inspection.

Figure 4: FEMA Applicant's Agent Designation Form

DESIGNATION OF APPLICANT'S AGENT

RESOLUTION

BE IT RESOLVED BY _____ OF _____
(Governing Body) *(Public Entity)*

THAT _____
 * *(Name of Incumbent)* *(Official Position)*

OR
 _____, Governor's Authorized Representative,
 * *(Name of Incumbent)*

is hereby authorized to execute for and in behalf of _____

_____, a public entity established under the laws of the State of _____, this application and to file it in the appropriate State office for the purpose of obtaining certain Federal financial assistance under the Disaster Relief Act (Public Law 288, 93rd Congress) or otherwise available from the President's Disaster Relief Fund.

THAT _____, a public entity established under the laws of the State of _____, hereby authorizes its agent to provide to the State and to the Federal Emergency Management Agency (FEMA) for all matters pertaining to such Federal disaster assistance the assurances and agreements printed on the reverse side hereof.

Passed and approved this _____ day of _____, 19 _____.

(Name and Title)

(Name and Title)

(Name and Title)

CERTIFICATION

I, _____, duly appointed and _____ of
(Title)

_____, do hereby certify that the above is a true and correct copy of a resolution passed and approved by the _____ of _____
(Governing Body) *(Public Entity)*

on the _____ day of _____, 19 _____.

Date: _____

(Official Position)

(Signature)

*Name of incumbent need not be provided in those cases where the governing body of the public entity desires to authorize any incumbent of the designated official position to represent it.

After the Final Inspection Report is completed and receives approval, the recipient files a Request for Reimbursement (Figure 6), attaching a listing of completed line items and their costs. The same form can be used to request advance payments as well as reimbursements. It is the final claim for the reimbursement of costs for all repair and reconstruction projects eligible and approved under FEMA's disaster assistance program.

Throughout the damage assessment-grant application-project administration-reimbursement process, it is essential for the local government to maintain detailed records. Records pertaining to damage assessment and repair costs should be well organized and contain accurate documentation. Damage Survey Reports should be accompanied by photographs, sketches, and property information; unsalvageable damaged equipment should be retained for inspection by survey teams. Records should be maintained to document repair costs that are contracted out or borne by the local government itself; this should include time sheets, equipment use schedules, and invoices when local staff and financial resources are expended. These local expenditures may apply to the 25 percent contribution required of local and state governments under FEMA's public assistance program.

In addition to funding local repair and reconstruction projects, the Federal government may deploy its own personnel and equipment to perform emergency work if local and state personnel and equipment are inadequate. To obtain this direct Federal assistance, the local government or state agency must submit a request to FEMA's Regional Director, via the Governor's Authorized Representative, within ten days after the Presidential declaration. The request takes the form of a resolution by the local governing body (or body governing a state agency) accompanied by a statement of why the work cannot be conducted with local or state resources. Local government budget

Figure 6: FEMA Request for Reimbursement Form

REQUEST FOR ADVANCE OR REIMBURSEMENT		Approved by Office of Management and Budget, No. OMB 4300-0004	PAGE OF PAGES
1. TYPE OF PAYMENT REQUEST: <input type="checkbox"/> ADVANCE <input type="checkbox"/> REIMBURSE <input type="checkbox"/> CASH		2. BASIS OF REQUEST: <input type="checkbox"/> CASH <input type="checkbox"/> ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY	5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST
6. EMPLOYER IDENTIFICATION NUMBER	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD COVERED BY THIS REQUEST	
9. RECIPIENT ORGANIZATION		10. PAYEE - NAME, TITLE, ADDRESS AND CITY/STATE/ZIP CODE	
11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED			
PROGRAMS/FUNCTIONS/ACTIVITIES	1981	1982	TOTAL
a. Total program activities to date (10/1/80 - 9/30/81)	\$	\$	\$
b. Less: Cumulative program activities to date			
c. Net program activities to date			
d. Estimated net contributions for advance period (10/1/81 - 9/30/82)			
e. Total (sum of rows c & d) (Advances requested)			
f. Net Federal share of amount on line e			
g. Federal share (Federal cost)			
h. Federal share (Federal share)			
i. Net Federal share (Federal share)			
1. Advances requested by recipient when requested by FEMA to grant advance for use in this program (continued activities)	1st month		
	2nd month		
	3rd month		
12. COMPUTATION FOR ADVANCES ONLY			
a. Total amount advanced on previous applications (10/1/80 - 9/30/81)			\$
b. Total amount of current advances (10/1/81 - 9/30/82)			
c. Percent of approved FEMA funding (10/1/80 - 9/30/82)			%
13. CERTIFICATION			
I certify that to the best of my knowledge and belief the data shown are correct and that all data were made in accordance with the grant conditions or other agreement and that I am not a slave and that my name is on their payrolls. All work has been completed or a listing of work not completed is attached for each pay month date.	SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		DATE REQUEST SUBMITTED
	TYPED OR PRINTED NAME AND TITLE		
TELEPHONE	Area Code	Number	Extension
I certify that the amount claimed on this report is correct and that the amount has not been received		TO FEMA NATIONAL OFFICE	
<input type="checkbox"/> Approved Amount \$ _____		<input type="checkbox"/> Approved Amount \$ _____	
<input type="checkbox"/> Disapproved		<input type="checkbox"/> Disapproved	
(Continued Activities Reimbursement) (Date)		(Requesting Director) (Date)	
REMARKS		FEMA USE	

Source: FEMA, 1981, Handbook for Applicants, p. I-1.

constraints are not considered a sufficient cause for receiving direct federal assistance. FEMA's Regional Director will either approve or deny the request or, if the request falls under the mission of another federal agency, refer the request to that agency.

Figure 7 illustrates the timetable under which FEMA's disaster assistance procedures operate. It includes deadlines for damage surveys, project applications, and project completion.

At the same time that local governments and state agencies are applying for Federal disaster assistance, FEMA's Interagency Regional Hazard Mitigation Team conducts its analysis of damages in the community, identifies opportunities for hazard mitigation, and issues its report recommending certain actions to be taken by Federal, state, and local agencies. Section 406 of the Disaster Relief Act requires, as a condition of any disaster loan or grant made under the provisions of the Act that the state or local government comply with these recommendations for hazard mitigation, which may involve flood control measures, land use regulations, or construction standards. These requirements are discussed in Part I, under the heading "Technical Assistance for Hazard Mitigation."

The procedures discussed in this introductory section are activated by a Presidential declaration of an emergency or a major disaster. Certain types of Federal assistance are available to local governments under their own authority independent of a Presidential declaration of an emergency or a major disaster (see Part II). The procedures for receiving such aid vary, as these programs are administered by separate Federal agencies. FEMA plays less of a coordinating function when there is no Presidential declaration.

Figure 7: Timing of Federal Disaster Assistance Activities

Activity	Days 0	15	30	45	90 (3 mos)	105	180 (6 mos)	540 (18 mos)
Disaster Event	x							
Preliminary Damage Assessment								
Pres. Declaration								
Establishment of Field Offices & Applicant Briefings								
Damage Survey Reports								
Project Applications and Approvals*								
Project Completion & Final Inspection:								
"Emergency" work								
"Permanent" work								
Interagency Reg. Haz. Mitigation Team Recommendations								
Progress Report								
Section 406 Planning Survey Plan								

*Thirty-day deadline if only an "emergency" is declared, not a "major disaster."

Adapted from: FEMA, 1981, Flood Hazard Mitigation: Handbook of Common Procedures, p. I-5.

PART I

Federal Assistance Available to Local Government Pursuant to a
Presidential Declaration of a Major Disaster or an Emergency

There are five major categories of assistance administered by the Federal Emergency Management Agency pursuant to a Presidential declaration of a major disaster or an emergency. They are:

1. Public Assistance
2. Community Disaster Loans
3. Temporary Housing
4. Disaster Unemployment Assistance
5. Individual and Family Grants

The first two of these, Public Assistance and Community Disaster Loans, provide funding directly to local governmental bodies. Community Disaster Assistance Loans are loans to communities to replace tax revenues lost due to a natural disaster. Aid available through Public Assistance falls within several categories:

- ✓ 1. Debris Removal
- ✓ 2. Emergency and Protective Measures
- ✓ 3. Roads and Bridges
- ✓ 4. Water Control
- ✓ 5. Public Buildings
- ✓ 6. Public Utilities
- ✓ 7. Facilities Under Construction
8. Timber Removal
9. Technical Assistance for Hazard Mitigation
10. Crisis Counseling Assistance and Training

The first two of these, Debris Removal and Emergency and Protective Work, are considered emergency assistance and are available under either a Presidential declaration of an emergency or a major disaster. The latter categories are classed as permanent work and are available only pursuant to a declaration of a major disaster.

This section of the Handbook first discusses the assistance available directly to local governments through the Public Assistance and Community Disaster Assistance Loan programs. The Temporary Housing Assistance, Disaster Unemployment Assistance, Individual and Family Grant Assistance, and Assistance for Private Non-Profit Facilities programs are discussed in Part III.

In addition to programs administered by FEMA, there are programs administered by other agencies that are available to local governments pursuant to a Presidential declaration of a major disaster or an emergency. These are discussed next. They include Emergency Relief for Federal-Aid Roads available through the Federal Highway Administration and School Construction, Maintenance, and Operation Assistance available through the Office of Elementary and Secondary Education in the Department of Education. A final program of possible significance is Title VIII-- Economic Recovery for Disaster Areas-- of the Public Works and Economic Development Act of 1965, as amended by the Disaster Recovery Act of 1974. This program provides a statutory basis for Federal assistance for the economic recovery of a major disaster area, after the period of emergency aid and replacement of facilities and services.

PUBLIC ASSISTANCE

Debris Removal

After a declaration of a major disaster or an emergency, grants may be made by FEMA to state or local governments for the removal of debris and wreckage under section 403 of the Disaster Relief Act, codified at 42 U.S.C.A.

§ 5173 [See Appendix I]. Grants may be made to state or local governments for debris removal or, in certain situations, Federal agencies may clear debris when the situation is beyond state and local capability. Such direct Federal assistance requires an unconditional authorization for such removal and indemnification against any claims for the removal activity.

Federal assistance to state and local governments for debris and wreckage removal from public and private property is available when such removal is found to be in the "public interest." Public interest considerations include the following:

- (a) necessary to eliminate a hazard which threatens health, life, and property;
- (b) necessary to eliminate a hazard which threatens substantial destruction of undamaged property;
- (c) essential for economic recovery of the affected community; and
- (d) benefit derived, directly or indirectly, by the community at large.

Individual and nongovernmental entities are not eligible for reimbursement for debris removal from their own property but they may have debris removed by state and local governments when in the public interest. Local governments should remove debris from property when in the public interest and when within their capability. They should also keep financial records to document debris removal expenditures and the salvage value of debris or wreckage cleared under an application for public assistance, which is deducted from the Federal contribution.

Emergency and Protective Measures

After a declaration of a major disaster or an emergency, technical assistance may be made available to state or local governments to provide emergency protective measures to save lives, remove health and safety hazards,

and to protect property from additional damage, including vector control and search and rescue operations. This assistance is available through FEMA under authority of section 305 of the Disaster Relief Act, codified at 42 U.S.C.A. § 5145.

Included in emergency assistance available through FEMA following a Presidential declaration or an emergency are Food, Water, and Shelter Assistance and Emergency Public Transportation. Following a declaration, FEMA may arrange for specialists from appropriate Federal agencies to assist and advise local governments in (1) surveying the availability of local food and supplies; (2) supervising the storage, transportation, and distribution of consumer goods and commodities; (3) sheltering operations; (4) providing potable water for emergency drinking and cooking purposes. FEMA may also provide emergency public transportation services to governmental offices, supply centers, stores, post offices, schools, major employment centers, and other places as necessary when such services have been severely disrupted.

Applications or requests for these emergency services and assistance should be submitted through the Governor's Authorized Representative to the Regional Director of the Federal Emergency Management Agency.

Permanent Work

After a Presidential declaration of a major disaster, grants are available through FEMA, pursuant to section 402 of the Disaster Relief Act of 1974, codified at 42 U.S.C.A. § 5172, to state or local governments in areas designated eligible for assistance, in order to repair, restore, reconstruct, or replace public facilities which have been damaged or destroyed. The Federal contribution is based upon the design of the facility as it existed immediately prior to the disaster and is made in conformity with applicable specifications and standards. Under the Act, "public facility" includes any

publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road or highway; any other public building, structure, or system including those used for educational and recreational purposes, and any park. Grants may be approved for eligible public facilities which were in the process of construction and were damaged or destroyed by the disaster.

Timber Removal

After a Presidential declaration of a major disaster, grants are available to state and local governments for the purpose of removing damaged timber from privately owned lands, when removal of such timber is found to be in the public interest. The state or local government is authorized to reimburse any person for expenses incurred in removing damaged timber; however, the reimbursement is not to exceed the difference between the incurred expense and the salvage value of the timber. This program is authorized by section 418 of the Disaster Relief Act, and codified in 42 U.S.C.A. § 5188.

Technical Assistance for Hazard Mitigation

Following a Presidential declaration of a major disaster, states and local governments are eligible for technical assistance to identify and evaluate natural hazards in disaster areas and to recommend appropriate hazard mitigation actions. Hazard mitigation programs are authorized by sections 201 and 406 of the Disaster Relief Act and are codified, respectively at 42 U.S.C.A. § § 5131 and 5176. The regulations implementing section 406 are found in 44 C.F.R. Subpart M, sections 205.400 et seq.

In addition to providing Federal assistance in hazard mitigation planning, section 406 requires state and local governments receiving Federal disaster assistance to evaluate natural hazards in the disaster area and to take

appropriate action to mitigate them. The Disaster Relief Act, and the regulations promulgated thereunder, outline a process for Federal, state, and local cooperation in evaluating hazards in the community and in selecting reasonable and effective measures to mitigate the effects of future disasters. This process culminates in the development of a Hazard Mitigation Plan, which the state submits to FEMA's Regional Director 180 days after the Presidential declaration.

The Section 406 Hazard Mitigation Plan has three primary goals:

1. To follow-up, in detail, recommendations of the Federal/state/local survey and planning teams and the Interagency Regional Hazard Mitigation Team;
2. To establish both immediate and long-term planning frameworks for implementation of hazard mitigation efforts;
3. To recommend hazard mitigation alternatives for local, state, and Federal agencies.

In meeting these goals, FEMA relies on the Federal-State Disaster Assistance Agreement, a joint Federal/state/local survey team, and a joint Federal/state/local planning team.

Under the Section 406 regulations, FEMA's Regional Director must include hazard mitigation in the Federal-State Disaster Assistance Agreement as a condition to state and local governments receiving relief funds. The state typically agrees (1) to evaluate natural hazards in the disaster area (or have the local governments applying for aid do so), (2) to follow up with applicants to ensure that they take appropriate actions to mitigate the hazards, (3) to review and update portions of emergency plans dealing with mitigation, and (4) to prepare and submit a Hazard Mitigation Plan for the disaster area.

The joint Federal/state/local survey team is composed of Federal, state, and local Hazard Mitigation Coordinators which are appointed by the FEMA Regional Director, the Governor's Authorized Representative, and the local

government applying for aid. The survey team uses information from site visits, Damage Survey Reports, and the Interagency Hazard Mitigation Report to identify significant hazards and their impacts and to evaluate and recommend specific hazard mitigation measures. The survey team submits its recommendations to the FEMA Regional Director and the Governor's Authorized Representative.

The joint Federal/state/local planning team is set up in the same manner as the survey team, often with the same persons sitting on both. The planning team evaluates state and local hazard mitigation plans and programs to see if they are effective at avoiding future disasters. Based on this evaluation, and the survey team's findings, the planning team prepares the Section 406 Hazard Mitigation Plan, which the Governor's Authorized Representative submits to the FEMA Regional Director. The Regional Director can then require the local or state government to update or develop appropriate hazard mitigation measures.

Under the Section 406 regulations, FEMA can approve or prescribe various hazard mitigation measures as a condition for issuing Federal disaster aid. These measures include land use regulations, construction standards, and other methods of avoiding the hazard. Land use regulations may include requiring facilities to locate outside of high hazard areas as well as other steps to protect individual facilities and to discourage development in high hazard areas. Construction standards will include those of the National Flood Insurance Program as well as state and local standards which the joint survey and planning teams might recommend. The FEMA Regional Director can deny funding for the repair or reconstruction of a building in a high hazard area where the structure would be subject to repeated damage or where a practical alternative location exists outside the high hazard area.

Crisis Counseling Assistance and Training

Section 413 of the Disaster Relief Act of 1974, (42 U.S.C.A. § 5183), provides that following a Presidential declaration of a major disaster, professional counseling services to victims of a major disaster and training of disaster workers to provide or assist in providing professional counseling services be made available through the National Institute of Mental Health. This assistance is available either directly or through financial assistance to State or local agencies or private mental health organizations capable of providing professional mental health crisis counseling services or mental health training of disaster workers. The standards and procedures that implement this program are set out in 42 C.F.R. § 38.1 et seq. [See Appendix II.]

COMMUNITY DISASTER LOANS

A local government which suffers a substantial loss of revenues as a result of a major disaster and which has a demonstrated need for financial assistance in order to perform its governmental functions may be eligible for federal loans under section 414 of the Disaster Relief Act, 42 U.S.C.A. § 5184. Through this program, loans not in excess of 25 percent of the annual operating budget of a local government for the fiscal year in which the disaster occurs are made available. Repayment of all or any part of such loan may be cancelled to the extent that revenues of the local government during the three fiscal years following the disaster are insufficient to meet the operating budget of that local government because of disaster-related revenue losses and additional disaster-related municipal operating expenses. Loan computation is based on the difference between estimated receipts of tax and other revenues considering the effects of the disaster and upon the predisaster revenue estimates of the local government. Only one loan per local government may be approved, either for the fiscal year of

occurrence or the fiscal year immediately following.

NON-FEMA PROGRAMS

Two important programs that may be available to local governments following a Presidential declaration of a major disaster, but which are not administered through the Federal Emergency Management Agency, are Emergency Relief for Federal-Aid Roads and School Construction, Maintenance, and Operation Assistance.

Emergency Relief for Federal-Aid Roads

This program is administered through the Federal Highway Administration, and assists States and local governments in repairing or reconstructing highways and appurtenant structures on the Federal-aid highway system which have suffered serious damage as the result of a natural disaster. The Federal Highway Administrator may provide emergency funds through a State highway agency for the repair or reconstruction of damaged elements of the Federal-aid highway system, following either a declaration of emergency by the Governor of an affected State or a declaration of a major disaster by the President.

Local governments may apply to the Federal Highway Administration through the State highway agency. The statute creating the program is found in 23 U.S.C.A. § 125, (see Appendix I) and the regulations promulgated pursuant to this statute to implement the program are found in 23 C.F.R. § 668.101 et seq. (see Appendix II).

School Construction, Maintenance, and Operation Assistance

This program is administered by the Office of Elementary and Secondary Education in the Department of Education. Following a Presidential declaration of a major disaster, local educational agencies may submit requests for

assistance to the Secretary of Education, through the State educational agency for Federal assistance. Two types of assistance are available: school construction, authorized by 20 U.S.C.A. § 646, and school maintenance and operation, authorized by 20 U.S.A.C.A. § 241-1.

School construction assistance is provided to construct and equip school facilities damaged or destroyed by a major disaster. The program includes a provision to provide facilities for children who attend private schools destroyed by a major disaster but which have not been or will not be rebuilt. School maintenance and operation assistance aids school districts in maintaining the level of education which existed before the disaster when a deficiency occurs due to increased costs and loss of revenue; for additional costs to educate children who formerly attended private schools; for debris removal and cleanup, minor repairs to buildings and the repair or replacement of equipment and supplies; and to provide temporary facilities.

ECONOMIC RECOVERY FOR DISASTER AREAS

Title VIII--Economic Recovery for Disaster Areas--created by the Disaster Relief Act of 1974, 42 U.S.C.A. § § 3231 to 3236 (see Appendix I) is a program which was created by Congress to provide assistance for the economic recovery, after the period of emergency aid and replacement of facilities and services, of a major disaster area which has suffered severe economic dislocation. The funding for the program (Section 3236) has been repealed, however the program is still in existence.

Summary

The following is a summary of the Federal assistance programs available directly to a local government pursuant to a Presidential declaration of a Major Disaster:

1. Clearance of debris, wreckage, and damaged timber from public or private lands and waters;
2. Emergency protective measures for the preservation of life and property;
3. Repair or replacement of roads, streets, and bridges;
4. Repair or replacement of water control facilities (dikes, levees, irrigation works, and drainage facilities);
5. Repair or replacement of public buildings and related equipment;
6. Repair or replacement of public utilities;
7. Repair or restoration to predisaster condition of public facilities damaged while under construction;
8. Repair or restoration of recreational facilities;
9. Technical assistance in identifying and evaluating natural hazards and recommending mitigation actions;
10. Professional counseling services to victims and training of disaster workers, either through direct assistance or through financial assistance to state or local agencies;
11. Disaster loans to communities that suffer a substantial loss of tax and other revenues and have demonstrated a need for financial assistance in order to perform their governmental functions;
12. Repairs and operating assistance to public elementary and secondary schools;
13. Use of Federal equipment, supplies, facilities, personnel, and other resources.

In the case of a Presidential declaration of an Emergency, the following assistance may be made available to local governments:

1. Emergency mass care, such as emergency shelter, emergency provision of food, water, and medicine, and emergency medical care;
2. Clearance of debris and wreckage to save lives and protect property and the public health and safety;
3. Emergency protective measures, including search and rescue, demolition of unsafe structures, warning of further risks and hazards;

4. Emergency communications support to state and local government officials; and
5. Emergency repairs to essential utilities and facilities as necessary to provide for their continued operation.

Part II

Federal Assistance Available to Local Government Under Its Own Authority Independent of a Presidential Declaration of a Major Disaster of an Emergency

There are a variety of sources of Federal assistance to local governments that are not contingent upon a Presidential declaration of a major disaster or an emergency related to flood and hurricane damage prevention and recovery. These assistance programs fall into two broad categories; immediate assistance to protect life and property, and relief and recovery assistance.

Immediate Assistance

Three separate Federal agencies may provide emergency assistance during a flood or hurricane.

The United States Army Corps of Engineers provides emergency assistance as required to supplement local efforts and capabilities in time of flood or coastal storm. Upon request by state or local agency to the Army Corps of Engineers local District or Division Engineer, the Corps offers specialized emergency assistance in all phases of flood fighting and rescue operations when state and local efforts and resources are being utilized to their maximum extent.

The United States Coast Guard is available to conduct search and rescue operations, medical evacuations, and disaster relief services and flights at the request of State Civil Defense authorities.

The Military Assistance to Civil Authorities (MACA) program makes military support available to civilian authorities during a natural disaster. During Hurricane Iwa, in November 1982, the military provided manpower, equipment and supplies, including heavy lift helicopters, to assist the Hawaiian electric company in restoring transmission lines; provided trucks and equipment for road clearing and debris removal; and provided generators, water trailers, food, fuel, and ice.

Relief and Recovery Assistance

In addition, there are several Federal programs that are not dependent upon a Presidential declaration of a major disaster or an emergency, which provide local governments with non-emergency assistance related to reduction of and recovery from hurricane damage.

Rehabilitation of Flood Control Works and Federally Authorized Coastal Protection Works, provided by the U.S. Army Corps of Engineers, is available both to owners of damaged protective works or to State and local officials of public entities responsible for their maintenance, repair, and operation, upon request to the District or Division Engineer for the jurisdiction. The Army Corps of Engineers provides services for the repair and restoration of flood control works damaged by floods and of federally-authorized shore protection works damaged by extraordinary winds, wave or water action. Assistance does not include major improvements of flood control or shore protection structures, or reimbursement of individuals or communities for funds expended in repair or rehabilitation efforts.

Emergency Bank Protection, provided by the Army Corps of Engineers offers protection for highways, highway bridges, and essential public works endangered by flood-caused erosion. State and local officials may apply to the District or Division engineer of the Army Corps of Engineers for the jurisdiction for design and construction assistance for bank protection projects. Federal cost limit is \$250,000.

Federal Flood Insurance Program

In addition to the Disaster Relief and Recovery Program administered by the Federal Emergency Management Agency, FEMA administers the Federal Flood Insurance Program, which provides federally-subsidized insurance for structures in flood-prone areas.

The National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973, establishes a program of subsidized flood insurance for existing properties in identified flood hazard areas. In return, local and state governments enact and enforce comprehensive floodplain management; which typically involves land use controls and construction standards, and other techniques--applied within flood-prone sections of a community, (i.e., within the 100-year floodplain). The primary purpose of the program is to reduce the amount of developed property exposed to flooding and to thereby reduce annual flood losses.

The Flood Insurance Program contains two elements of particular interest to local officials concerned with post-disaster recovery programs. These are the constructive total loss policy and section 1362 of the National Flood Insurance Act (42 U.S.C.A. § 4103--see Appendix I).

The constructive total loss program covers those cases where property is not totally destroyed but has lost its economic value. It requires the full cooperation of the property owner and of the local government involved. This allows the Federal Insurance Agency to declare the property a constructive total loss and pay the owner's claim up to the policy limit even though the actual damages do not equal the amount covered by the policy. The owner must then rebuild outside the flood hazard area. The property is dedicated to the community for open space use. To date, this approach has seen limited use.

A variation of the constructive total loss approach was recently used in Nags Head, North Carolina to relocate approximately 14 oceanfront homes which faced imminent collapse due to storm-induced erosion. Several oceanfront homes in South Nags Head were damaged by a storm to a point where the next major storm was certain to erode the land beneath them and cause them to collapse. The FIA could have simply paid the claims to repair the buildings

to their original condition in their original locations. However, the FIA realized that this would result in another claims payment after the next storm and sought a more far-sighted solution. The FIA, in cooperation with the homeowners, settled the claims to pay for moving the damaged homes back from the rapidly eroding shoreline, yet still on the owner's lots, and out of the area posing the greatest hazard in future storms. The decision saved the FIA about \$775,000 in future claims.

The second program, Section 1362, empowers the FIA to purchase insured properties that have been seriously damaged by flooding, to move the damaged structures, and to transfer the land as open space to a state or local government agency. As with the "constructive total loss" approach, the Section 1362 program relies on the full cooperation of the property owner and the local government. In order to qualify for purchase under Section 1362, the damaged property must be covered by a flood insurance policy and must meet one or more of the following criteria:

1. Damaged by flooding "substantially beyond repair";
2. Damaged by flooding no less than three times in the past five years, where the average cost of repairs was no less than 25 percent of the value of the structure; and
3. Damaged to an extent where an existing statute, ordinance, or regulation prevents its restoration or allows its restoration only at a significantly higher cost.

The property owner can use the money from the sale to rebuild at another location outside the flood hazard area. Structures which meet the above criteria must also show an economic benefit to be gained through acquisition of the property (such as avoiding future damage and reducing flood insurance claim payments and disaster relief costs).

The FIA also maintains eight "community selection factors" for allocating Section 1362 funds (see Table II-1). A community does not need to meet all the

Table II-1: Community Selection Factors for the
Section 1362 Program

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1. The permanent removal of flood-prone structures will contribute to existing, on-going programs for permanent evacuation of flood plains.
 2. In addition to hazard mitigation, acquisition will contribute to the achievement of multiple community development goals (such as environmental protection, open space/recreation, urban renewal, or some other public purpose).
 3. The acquisition and relocation of flood-prone structures will have an economic benefit in terms of eliminating future flood insurance claims, avoiding future damage, reducing future disaster relief costs, avoiding business interruption, and reducing loss of life.
 4. The distribution of properties to be acquired under Section 1362 (or the distribution of these properties combined with properties that can be acquired through other programs) will result in a logical, usable, and desirable land use pattern.
 5. Alternatives to acquisition under Section 1362 have been investigated and found to be less effective than Section 1362 in meeting the community's floodplain management and hazard mitigation goals. These alternatives could include, but are not limited to, floodproofing, structural flood protection, or acquisition and relocation programs of local, state, or other federal agencies.
 6. The community has undergone a planning process and found acquisition/relocation to be the most desirable alternative in terms of cost, degree of flood protection achieved, environmental enhancement, and other factors.
 7. The community has demonstrated, or agreed to pursue, an active program of sound floodplain management which exceeds the minimum requirements of the National Flood Insurance Program.
 8. The community can actively participate in the planning and implementation of the Section 1362 program through the provision of either financial or staff resources.
-

factors. Some of the factors carry more weight than others when the FIA is evaluating the community for participation in the program. A community's ability to rank highly on these criteria is an important factor in obtaining funding, especially since overall funding for the program has been limited. Congress did not appropriate money to administer Section 1362 until 1980, when it allocated 5.4 million dollars for Fiscal Year 1980. Subsequent appropriations have been as follows: FY 81--five million dollars; FY 1982--1.6 million dollars; and FY 83--4.8 million dollars (projected). The community seeking Section 1362 funds must also submit a "re-use plan" outlining how the community will manage the acquired land and indicating any changes it expects to make in existing land use plans and ordinances to accommodate the uses it proposes for the acquired properties.

The Section 1362 program has been used more widely than the "constructive total loss" approach. After the devastation of Hurricane Frederic in 1979, the Flood Insurance Administration used about one million dollars in Section 1362 funds to acquire five damaged beach properties in Gulf Shores, Alabama. The FIA then conveyed title to the town, adding 3.5 acres to the public beach. In 1980, the FIA used \$500,000 in Section 1362 funds to purchase 16 beach-front lots in Scituate, Massachusetts, which were severely damaged in 1978 by the most destructive northeaster to ever hit the Massachusetts coast. The lots are now managed by the town as recreational beach and conservation areas. It appears that Section 1362 will be utilized by the City of Baytown, Texas, following Hurricane Alicia in August of 1983, to prohibit restoration and reoccupancy of flood damaged property in the Brownwood Subdivision.

Since the Section 1362 program has dealt mainly with scattered damaged structures in most communities where it has been used, local governments have often used other sources (such as disaster relief programs) to supplement

Section 1362 funds in relocating damaged buildings. Planning before a major storm occurs can help the community target its efforts and effectively pursue sources of funding for post-disaster relocation projects. Such planning should account for the hazardous areas present in the community, local reconstruction policies, and the different sources of funding available.

Part III

Federal Assistance Available to Entities Other than Local Governments Following a Presidential Declaration of a Major Disaster or an Emergency

This section describes Federal programs providing assistance to individuals, families, certain non-profit associations, and businesses pursuant to a Presidential declaration of a major disaster or an emergency.

1. Repair or Restoration of Private Nonprofit Facilities

Section 402 of the Disaster Relief Act of 1974 authorizes Federal financial assistance to private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged or disabled, which are damaged or destroyed by a major disaster. The program, administered by FEMA, provides grants for repairing, replacing, reconstructing, or restoring, facilities on the basis of their design immediately prior to the disaster and in conformity with applicable codes, specifications, and standards.

Application is made by the private nonprofit organization through the Governor's Authorized Representative to the Regional Director of the Federal Emergency Management Agency.

2. Disaster Legal Services

Section 412 of the Disaster Relief Act makes free legal services available to low-income disaster victims who require legal assistance securing claims to benefits arising out of a major disaster.

3. Individual and Family Grants

Section 408 of the Disaster Relief Act provides grants to meet necessary disaster-related expenses or serious needs which cannot be met through assistance from other sources. Individuals and families adversely affected by a Presidentially-declared major disaster are eligible. The program is funded by 75-25 percent, Federal-state cost sharing, with grants up to \$5,000 per individual. Application is made to the designated state agency at the Disaster

Assistance Centers, and after their closure, at the state agency for a 60-day period after the disaster declaration. The program is administered by FEMA through a select state agency.

4. Small Business Administration Physical Disaster Loans

The Small Business Administration makes guaranteed loans to repair or replace damaged or destroyed realty, machinery, and equipment, household and other personal property not covered by insurance, or in some instances to refinance a mortgage or lien on destroyed or damaged real property if it is to be repaired or replaced. Homeowners, renters with personal property loss, business concerns, churches, private schools, colleges and universities, and hospitals which have suffered physical property loss in an area designated as eligible for disaster assistance are eligible to apply for the loans. Applications are made to the nearest regular SBA office or to a special disaster office. The program requires a Presidential declaration of a major disaster or a declaration by the Administrator of the Small Business Administration.

5. Mobile Home Loans Insurance and Mortgage Insurance - Homes for Disaster Victims

The Department of Housing and Urban Development can guarantee or insure loans to disaster victims for purchasing homes.

6. Adjustments to Federal Loans

The Department of Housing and Urban Development can refinance any loan it has made when a property owner holding a HUD loan needs refinancing because of damage to property caused by a natural disaster.

7. Unemployment Assistance

Section 407 of the Disaster Relief Act authorizes job placement and disaster unemployment assistance to persons unemployed as a result of a Presidentially-declared major disaster. The program is administered by the Department of Labor and the Federal Emergency Management Agency. Individuals

apply to the state unemployment insurance office representatives at a Disaster Assistance Center. Compensation under the program is limited to the maximum amount of payment under the unemployment compensation program of the state in which the disaster occurred.

8. Emergency Farm Loans

The Farmers Home Administration provides loans to assist farmers, ranchers, and aquaculture operators to cover losses resulting from a natural disaster and to return the operation to a financially sound position. Farmers, ranchers, and aquaculture operators who suffer severe crop losses or property damage caused by a designated natural disaster and not compensated for by insurance or otherwise may be eligible for these guaranteed loans. The loans are available to repair, restore, or replace damaged or destroyed farm property and supplies; to provide annual operating expenses for up to three years following the disaster; to refinance debts made necessary by the disaster; and to finance adjustments in the operation necessitated by the disaster to restore the applicant to a sound position equivalent to his pre-disaster situation.

9. Aid to Major Sources of Employment

The Small Business Administration and the Farmers Home Administration offer long-term, low-interest loans to help employers resume operations and to help restore the economic vitality of a community. The program is designed to enable major sources of employment resume operations in order to assist in restoring the economic vitality of a disaster area. Following a Presidential declaration of a major disaster, any industrial, commercial, agricultural or other enterprise which has constituted a major source of employment in an area which has suffered a disaster and which is no longer in substantial operation as a result of a disaster, may apply to the Small

Business Administration in the case of a non-agricultural enterprise, and to the Farmers Home Administration in the case of an agricultural enterprise.

10. Economic Injury Disaster Loans

The Small Business Administration provides loans to small business concerns suffering substantial economic injury as a result of a disaster. The loans provide up to \$500,000 to help the business maintain its working capital position and to meet financial obligations which it could have met if the disaster had not occurred. Following a Presidential declaration of a major disaster or a declaration by the Administrator of the SBA, a small business as defined by the SBA may apply for these loans.

11. Adjustments to Federal Loans

Both the Department of Housing and Urban Development and the Veterans Administration allow adjustments to loan requirements in order to assist the victim of a natural disaster. After a Presidential declaration of a major disaster, the agencies will consider refinancing loans to affected loanholders. HUD also offers insured loans to finance the purchase of proposed, under construction, or existing single-family housing for a occupant-mortgagor who is a victim of a major disaster.

12. Temporary Housing

Section 404 of the Disaster Relief Act of 1974 authorizes that temporary housing for individuals and families displaced as a result of a disaster be provided. Following a Presidential declaration of a major disaster, individuals and families displaced from their homes may receive temporary housing in the form of government, private, and commercial resources or grants for minor repairs to owner-occupied structures. No rent is charged for the first twelve months of occupancy. Temporary assistance with mortgage or rental payments for persons faced with loss of their residence because of disaster-created financial hardship is also available.

13. Food Stamp Program - Emergency Issue

The Food and Nutrition Service of the United States Department of Agriculture provides an emergency issuance of food stamps to households who are victims of a disaster which disrupts normal channels of food distribution. Following a Presidential declaration of a major disaster or an emergency, applications are processed through the Federal Emergency Management Agency.

Appendix I

Pertinent Federal Statutes

1. Disaster Relief Act of 1974 (PL 93-288), codified at 42 United States Code Annotated § § 5121 - 5202.

Code to Codification

Section of Act

Section in U.S.C.A.

101	5121
102	5122
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202	5132
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CHAPTER 68—DISASTER RELIEF

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- Assistance for economic recovery of areas affected by major disaster as defined under this chapter, see section 3231 of this title.
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Assistance to states to reduce hazards of earthquakes, see section 7704 of this title.
Deduction from individual income tax of loss attributable to major disaster as determined under this chapter, see section 165 of Title 26, Internal Revenue Code.
Displaced families or persons defined as families or persons displaced under this chapter for purposes of mortgage insurance, see section 1715/ of Title 12, Banks and Banking.
Exemptions from endangered or threatened species and habitat requirements in Presidentially declared disaster areas, see section 1536 of Title 16, Conservation.
Farm commodities or products made available to major disaster areas as determined under this chapter, see section 1427 of Title 7, Agriculture.
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Financial assistance for acquisition or construction purposes defined as including assistance received under this chapter, see section 4003 of this title.
Issuance and insurance of loans relating to farming, ranching, or aquaculture operations affected by major disaster as determined under this chapter, see section 1961 of Title 7, Agriculture.
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Losses to tobacco products, cigarette papers and tubes due to major disaster as determined under this chapter, see section 5708 of Title 26, Internal Revenue Code.
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SUBCHAPTER I—FINDINGS, DECLARATIONS,
AND DEFINITIONS

§ 5121. Congressional findings and declarations

(a) The Congress hereby finds and declares that—

- (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and

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(2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity;

special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.

(b) It is the intent of the Congress, by this chapter, to provide an orderly and continuing means of assistance by the Federal Government to State and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from such disasters by—

(1) revising and broadening the scope of existing disaster relief programs;

(2) encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and by local governments;

(3) achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) encouraging individuals, States, and local governments to protect themselves by obtaining insurance coverage to supplement or replace governmental assistance;

(5) encouraging hazard mitigation measures to reduce losses from disasters, including development of land use and construction regulations;

(6) providing Federal assistance programs for both public and private losses sustained in disasters; and

(7) providing a long-range economic recovery program for major disaster areas.

(Pub.L. 93-288, Title 1, § 101, May 22, 1974, 88 Stat. 143.)

Historical Note

References in Text. This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note below and Tables volume.

Effective Date. Section 605 of Pub.L. 93-288 provided that: "Except for section 408 (section 5178 of this title), this Act [see Short Title note below] shall take effect as of April 1, 1974."

Short Title of 1980 Amendment. Pub.L. 96-568, § 1, Dec. 22, 1980, 94 Stat. 3334, provided: "That this Act [amending section 5202 of this title] may be cited as the 'Disaster Relief Act Amendments of 1980'."

Short Title. Section 1 of Pub.L. 93-288 provided: "That this Act [enacting this section and sections 3231 to 3236, 5122, 5131, 5132, 5141 to 5158, 5171 to 5189, 5201, and

5202 of this title, and section 1264 of Title 31, Money and Finance, amending sections 1706c, 1709, 1715/ of Title 12, Banks and Banking, sections 241-1, 646, 758 of Title 20, Education, sections 165, 5064, 5708 of Title 26, Internal Revenue Code, section 1820 of Title 38, Veterans' Benefits, section 461 of Title 40, Public Buildings, Property, and Works, repealing sections 4401, 4402, 4411 to 4413, 4414 to 4420, 4431 to 4436, 4457 to 4462, 4481 to 4485 of this title, and enacting provisions set out as notes under this section and sections 4401, and 5178 of this title, section 1264 of Title 31, and section 1681 of Title 48, Territories and Insular Possessions] may be cited as the 'Disaster Relief Act of 1974'."

Delegation of Functions. Functions of the President under the Disaster Relief Acts of 1970 and 1974, with certain exceptions, are delegated to the Director of the Federal

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Emergency Management Agency, see sections 4-201 and 4-203 of Ex.Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

References to Disaster Relief Act of 1970. Section 602(m) of Pub.L. 93-288 provided that: "Whenever reference is made in any provision of law (other than this Act [the Disaster Relief Act of 1974, see Short Title note

above]), regulation, rule, record, or document of the United States to provisions of the Disaster Relief Act of 1970 (84 Stat. 1744) repealed by this Act such reference shall be deemed to be a reference to the appropriate provision of this Act."

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

EXECUTIVE ORDER NO. 11749

Ex.Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which related to the consolidation of functions assigned to the Secretary of Housing and Urban Development, was revoked by

Ex.Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of the Appendix to Title 50, War and National Defense.

EXECUTIVE ORDER NO. 11795

Ex.Ord. No. 11795, July 11, 1974, 39 F.R. 25939, as amended, which related to the delegation of certain functions of the President of the United States, was revoked by Ex.Ord.

No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of the Appendix to Title 50, War and National Defense.

Library References

United States 82(5).

C.J.S. United States § 122.

§ 5122. Definitions

As used in this chapter—

(1) "Emergency" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a disaster.

(2) "Major disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(3) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

(4) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, or the Trust Territory of the Pacific Islands.

(5) "Governor" means the chief executive of any State.

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

(7) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

(Pub.L. 93-288, Title I, § 102, May 22, 1974, 88 Stat. 144.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

For definition of Canal Zone, referred to in pars. (3) and (4), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Cross References

Major disaster as defined in this section affecting—

Disaster housing mortgage insurance, see section 1709 of Title 12, Banks and Banking.

Dollar or percentage limitation of principal obligation on mortgages provided under National Housing Act, see section 1706c of Title 12.

Local educational agency seeking additional assistance to provide educational facilities, see section 646 of Title 20, Education.

Local educational agency seeking additional assistance to provide free public education, see section 241-1 of Title 20.

Notes of Decisions

1. Emergency

Definition of "emergency" in this section did not support the application of this chapter to Cuban and Haitian refugee situation in Florida; the definition encompasses only nat-

ural disasters; accordingly, the provisions of section 4332 of this title were not inapplicable. *Colon v. Carter*, D.C. Puerto Rico 1980, 507 F.Supp. 1026, vacated on other grounds 633 F.2d 964.

SUBCHAPTER II—DISASTER PREPAREDNESS ASSISTANCE

§ 5131. Federal and state disaster preparedness programs

(a) Utilization of services of other agencies

The President is authorized to establish a program of disaster preparedness that utilizes services of all appropriate agencies (including the Defense Civil Preparedness Agency) and includes—

(1) preparation of disaster preparedness plans for mitigation, warning, emergency operations, rehabilitation, and recovery;

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- (2) training and exercises;
- (3) postdisaster critiques and evaluations;
- (4) annual review of programs;
- (5) coordination of Federal, State, and local preparedness programs;
- (6) application of science and technology;
- (7) research.

(b) Technical assistance for development of plans and programs

The President shall provide technical assistance to the States in developing comprehensive plans and practicable programs for preparation against disasters, including hazard reduction, avoidance, and mitigation; for assistance to individuals, businesses, and State and local governments following such disasters; and for recovery of damaged or destroyed public and private facilities.

(c) Grants to states for development of plans and programs

Upon application by a State, the President is authorized to make grants, not to exceed in the aggregate to such State \$250,000, for the development of plans, programs, and capabilities for disaster preparedness and prevention. Such grants shall be applied for within one year from May 22, 1974. Any State desiring financial assistance under this section shall designate or create an agency to plan and administer such a disaster preparedness program, and shall, through such agency, submit a State plan to the President, which shall—

- (1) set forth a comprehensive and detailed State program for preparation against and assistance following, emergencies and major disasters, including provisions for assistance to individuals, businesses, and local governments; and
- (2) include provisions for appointment and training of appropriate staffs, formulation of necessary regulations and procedures and conduct of required exercises.

(d) Grants for improvement, maintenance, and updating of state plans

The President is authorized to make grants not to exceed 50 per centum of the cost of improving, maintaining and updating State disaster assistance plans, except that no such grant shall exceed \$25,000 per annum to any State.

(Pub.L. 93-288, Title II, § 201, May 22, 1974, 88 Stat. 145.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster preparedness programs and assistance, see 44 CFR 300.1 et seq.

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Library References

United States § 82(5).

C.J.S. United States § 122.

Notes of Decisions

- I. Disaster assistance agreements provide such assistance as was called for therein. State of Tex. v. U. S., 1976, 537 F.2d 466, 210 Ct.Cl. 522.
- Disaster assistance agreement was binding contract which obligated United States to

§ 5132. Disaster warnings

(a) Readiness of federal agencies to issue warnings to state and local officials

The President shall insure that all appropriate Federal agencies are prepared to issue warnings of disasters to State and local officials.

(b) Technical assistance to state and local governments for effective warnings

The President shall direct appropriate Federal agencies to provide technical assistance to State and local governments to insure that timely and effective disaster warning is provided.

(c) Warnings to governmental authorities and public endangered by disaster

The President is authorized to utilize or to make available to Federal, State, and local agencies the facilities of the civil defense communications system established and maintained pursuant to section 2281(c) of Title 50, Appendix, or any other Federal communications system for the purpose of providing warning to governmental authorities and the civilian population in areas endangered by disasters.

(d) Agreements with commercial communications systems for use of facilities

The President is authorized to enter into agreements with the officers or agents of any private or commercial communications systems who volunteer the use of their systems on a reimbursable or nonreimbursable basis for the purpose of providing warning to governmental authorities and the civilian population endangered by disasters.

(Pub.L. 93-288, Title II, § 202, May 22, 1974, 88 Stat. 145.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

SUBCHAPTER III—DISASTER ASSISTANCE
ADMINISTRATION

§ 5141. Procedure for determination of existence of emergency or major disaster

(a) All requests for a determination by the President that an emergency exists shall be made by the Governor of the affected State. Such request shall be based upon the Governor's finding that the situation is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency, and will define the type and extent of Federal aid required. Based upon such Governor's request, the President may determine that an emergency exists which warrants Federal assistance.

(b) All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected States. Such Governor's request shall be based upon a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As a part of this request, and as a prerequisite to major disaster assistance under this chapter, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan. He shall furnish information on the extent and nature of State resources which have been or will be used to alleviate the conditions of the disaster, and shall certify that for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster. Based upon such Governor's request, the President may declare that a major disaster exists, or that an emergency exists.

(Pub.L. 93-288, Title III, § 301, May 22, 1974, 88 Stat. 146.)

Historical Note

References in Text. This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Cross References

Major disaster as determined by this section affecting—

Disaster housing mortgage insurance, see section 1709 of Title 12, Banks and Banking.
Dollar or percentage limitation of principal obligation on mortgages provided under National Housing Act, see section 1706c of Title 12.

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- Local educational agency seeking additional assistance to provide educational facilities, see section 646 of Title 20, Education.
- Local educational agency seeking addition assistance to provide free public education, see section 241-1 of Title 20.
- Prohibition against consideration of change of information used to determine revenue sharing allocation when change results from major disaster, see section 6713 of Title 31, Money and Finance.

Library References

United States Ⓒ82(5).

C.J.S. United States § 122.

§ 5142. Federal assistance

(a) Coordination of federal efforts in providing disaster assistance; scope of services; rules and regulations

In the interest of providing maximum mobilization of Federal assistance under this chapter, the President shall coordinate, in such manner as he may determine, the activities of all Federal agencies providing disaster assistance. The President may direct any Federal agency, with or without reimbursement, to utilize its available personnel, equipment, supplies, facilities, and other resources including managerial and technical services in support of State and local disaster assistance efforts. The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency as he may designate.

(b) Waiver of administrative conditions for assistance

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

(c) Damage to farm fencing; special assistance

Notwithstanding any other provision of law, any repair, restoration, reconstruction, or replacement of farm fencing damaged or destroyed as a result of any major disaster shall be considered an emergency conservation measure eligible for payments under chapter I of the Third Supplemental Appropriation Act, 1957, or any other provision of law.

(Pub.L. 93-288, Title III, § 302, May 22, 1974, 88 Stat. 146.)

Historical Note

References in Text. "This chapter", referred to in subsec. (a), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note under section 5121 of this title and Tables volume.

Chapter I of the Third Supplemental Appropriation Act, 1957, referred to in subsec. (c), is chapter I of Pub.L. 85-58, 71 Stat. 176, which was not classified to the Code.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

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Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Cross References

Temporary emergency fund assistance, see section 2014 of Title 7, Agriculture.

Code of Federal Regulations

Small Business Administration, disaster loans, see 13 CFR 123.0 et seq.

Notes of Decisions

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Circulars 2

2. Circulars

Provisions of former Office of Emergency Planning circulars dealing with reimbursability of eligible private contractor costs under disaster assistance agreements are only instructional and definitional in format and purpose, intended to describe those costs which United States may reimburse state for and do not state binding obligation on part of Office to reimburse all such costs; and they merely detail rules governing state's application for, rather than United States provision of, federal assistance. *State of Tex. v. U. S.*, 1976, 537 F.2d 466, 210 Ct.Cl. 522.

I. Breach of contract

Where disaster assistance agreement with state provided that former Office of Emergency Planning's obligation was to provide federal disaster assistance within limits of funds authorized by President and Office provided state with all funds authorized by President for federal assistance to state, Office had fulfilled its obligation to provide federal assistance under terms of agreement and state could not recover additional disaster assistance funds by way of breach of contract action. *State of Tex. v. U. S.*, 1976, 537 F.2d 466, 210 Ct.Cl. 522.

§ 5143. Coordinating officers**(a) Appointment of federal coordinating officer**

Immediately upon his declaration of a major disaster, the President shall appoint a Federal coordinating officer to operate in the affected area.

(b) Functions of federal coordinating officer

In order to effectuate the purposes of this chapter, the Federal coordinating officer, within the affected area, shall—

(1) make an initial appraisal of the types of relief most urgently needed;

(2) establish such field offices as he deems necessary and as are authorized by the President;

(3) coordinate the administration of relief, including activities of the State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations, which agree to operate under his advice or direction, except that nothing contained in this chapter shall limit or in any way affect the responsibilities of the American National Red Cross under the Act of January 5, 1905, as amended (33 Stat. 599) [36 U.S.C.A. § 1 et seq.]; and

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(4) take such other action, consistent with authority delegated to him by the President, and consistent with the provisions of this chapter, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(c) State coordinating officer

When the President determines assistance under this chapter is necessary, he shall request that the Governor of the affected State designate a State coordinating officer for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government.

(Pub.L. 93-288, Title III, § 303, May 22, 1974, 88 Stat. 147.)

Historical Note

References in Text. This chapter, referred to in subsecs. (b) and (c), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

The Act of January 5, 1905, as amended (33 Stat. 599), referred to in subsec. (b), is Act Jan. 5, 1905, c. 23, 33 Stat. 599, which enacted sections 1, 2, 3, 4, 4a, 5, 6, 8, and 9 of

Title 36, Patriotic Societies and Observances. For complete classification of this Act to the Code, see Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5144. Emergency support teams

The President shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal coordinating officer in carrying out his responsibilities pursuant to this chapter. Upon request of the President, the head of any Federal agency is directed to detail to temporary duty with the emergency support teams on either a reimbursable or nonreimbursable basis, as is determined necessary by the President, such personnel within the administrative jurisdiction of the head of the Federal agency as the President may need or believe to be useful for carrying out the functions of the emergency support teams, each such detail to be without loss of seniority, pay, or other employee status.

(Pub.L. 93-288, Title III, § 304, May 22, 1974, 88 Stat. 148.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

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§ 5145. Emergency assistance

(a) Authority of President

In any emergency, the President may provide assistance to save lives and protect property and public health and safety.

(b) Technical assistance; advisory personnel

The President may provide such emergency assistance by directing Federal agencies to provide technical assistance and advisory personnel to the affected State to assist the State and local governments in—

(1) the performance of essential community services; warning of further risks and hazards; public information and assistance in health and safety measures; technical advice on management and control; and reduction of immediate threats to public health and safety; and

(2) the distribution of medicine, food, and other consumable supplies, or emergency assistance.

(c) Other assistance

In addition, in any emergency, the President is authorized to provide such other assistance under this chapter as the President deems appropriate.

(Pub.L. 93-288, Title III, § 305, May 22, 1974, 88 Stat. 148.)

Historical Note

References in Text. This chapter, referred to in subsec. (c), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Emergency Hay Program; Repayment of Transportation Costs; Effective and Termination Dates. Section 8 of Pub.L. 94-463, Oct. 8, 1976, 90 Stat. 1983, provided that: "In carrying out any emergency hay program for farmers or ranchers in any area of the

United States under section 305 of the Disaster Relief Act of 1974 [this section] because of an emergency or major disaster in such area, the President shall direct the Secretary of Agriculture to pay 80 percent of the cost of transporting hay (not to exceed \$50 per ton) from areas in which hay is in plentiful supply to the area in which such farmers or ranchers are located. The provisions of this section shall expire on October 1, 1977, and shall become effective on October 1, 1976, or on the date of enactment of this Act [Oct. 8, 1976], whichever is later."

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5146. Cooperation of federal agencies in rendering disaster assistance

(a) In any major disaster or emergency, Federal agencies are hereby authorized, on the direction of the President, to provide assistance by—

(1) utilizing or lending, with or without compensation therefor, to States and local governments, their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any Act;

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(2) distributing or rendering, through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations, or otherwise, medicine, food and other consumable supplies, or emergency assistance;

(3) donating or lending equipment and supplies, including that determined in accordance with applicable laws to be surplus to the needs and responsibilities of the Federal Government, to State and local governments for use or distribution by them for the purposes of this chapter; and

(4) performing on public or private lands or waters any emergency work or services essential to save lives and to protect and preserve property, public health and safety, including but not limited to: search and rescue, emergency medical care, emergency mass care, emergency shelter, and provisions of food, water, medicine, and other essential needs, including movement of supplies or persons; clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services; provision of temporary facilities for schools and other essential community services; demolition of unsafe structures that endanger the public; warning of further risks and hazards; public information and assistance on health and safety measures; technical advice to State and local governments on disaster management and control; reduction of immediate threats to life, property, and public health and safety; and making contributions to State or local governments for the purpose of carrying out the provisions of this paragraph.

(b) Work performed under this section shall not preclude additional Federal assistance under any other section of this chapter.

(Pub.L. 93-288, Title III, § 306, May 22, 1974, 88 Stat. 148.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5147. Reimbursement of federal agencies

Federal agencies may be reimbursed for expenditures under this chapter from funds appropriated for the purposes of this chapter. Any funds received by Federal agencies as reimbursement for services or supplies furnished under the authority of this chapter shall be deposited to the credit of the appropriation or appropriations currently available for such services or supplies.

(Pub.L. 93-288, Title III, § 307, May 22, 1974, 88 Stat. 149.)

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Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5148. Nonliability of Federal Government

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

(Pub.L. 93-288, Title III, § 308, May 22, 1974, 88 Stat. 149.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5149. Performance of services

(a) Utilization of services or facilities of state and local governments

In carrying out the purposes of this chapter, any Federal agency is authorized to accept and utilize the services or facilities of any State or local government, or of any agency, office, or employee thereof, with the consent of such government.

(b) Appointment of temporary personnel, experts, and consultants; acquisition, rental, or hire of equipment, services, materials and supplies

In performing any services under this chapter, any Federal agency is authorized—

(1) to appoint and fix the compensation of such temporary personnel as may be necessary, without regard to the provisions of Title 5 governing appointments in competitive service;

(2) to employ experts and consultants in accordance with the provisions of section 3109 of such Title, without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such Title relating to classification and General Schedule pay rates; and

(3) to incur obligations on behalf of the United States by contract or otherwise for the acquisition, rental, or hire of equipment, services, materials, and supplies for shipping, drayage, travel, and communications, and for the supervision and administration of such activities.

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Such obligations, including obligations arising out of the temporary employment of additional personnel, may be incurred by an agency in such amount as may be made available to it by the President.

(Pub.L. 93-288, Title III, § 309, May 22, 1974, 88 Stat. 149.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

The provisions of Title 5 governing appointments in the competitive service, referred to in subsec. (b)(1), are classified to

section 3301 et seq. of Title 5, Government Organization and Employees.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5150. Use of local firms and individuals

In the expenditure of Federal funds for debris clearance, distribution of supplies, reconstruction, and other major disaster assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster.

(Pub.L. 93-288, Title III, § 310, May 22, 1974, 88 Stat. 150.)

Historical Note.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5151. Nondiscrimination in disaster assistance**(a) Regulations for equitable and impartial relief operations**

The President shall issue, and may alter and amend, such regulations as may be necessary for the guidance of personnel carrying out Federal assistance functions at the site of a major disaster or emergency. Such regulations shall include provisions for insuring that the distribution of supplies, the processing of applications, and other relief and assistance activities shall be accomplished in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(b) Compliance with regulations as prerequisite to participation by other bodies in relief operations

As a condition of participation in the distribution of assistance or supplies under this chapter or of receiving assistance under section 5172 or 5174 of this title, governmental bodies and other organizations shall be required to comply with regulations relating to nondiscrimination promulgated by the

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President, and such other regulations applicable to activities within an area affected by a major disaster or emergency as he deems necessary for the effective coordination of relief efforts.

(Pub.L. 93-288, Title III, § 311, May 22, 1974, 88 Stat. 150.)

Historical Note

References in Text. This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5152. Use and coordination of relief organizations

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

(b) The President is authorized to enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief or disaster assistance organizations under which the disaster relief activities of such organizations may be coordinated by the Federal coordinating officer whenever such organizations are engaged in providing relief during and after a major disaster or emergency. Any such agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with regulations prohibiting duplication of benefits and guaranteeing nondiscrimination promulgated by the President under this chapter, and such other regulation as the President may require.

(Pub.L. 93-288, Title III, § 312, May 22, 1974, 88 Stat. 150.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5153. Priority to certain applications for public facility and public housing assistance

(a) In the processing of applications for assistance, priority and immediate consideration shall be given by the head of the appropriate Federal agency, during such period as the President shall prescribe, to applications from

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public bodies situated in areas affected by major disasters, under the following Acts:

- (1) title II of the Housing Amendments of 1955 [42 U.S.C.A. § 1491 et seq.], or any other Act providing assistance for repair, construction, or extension of public facilities;
- (2) the United States Housing Act of 1937 [42 U.S.C.A. § 1437 et seq.] for the provision of low-rent housing;
- (3) section 462 of Title 40 for assistance in public works planning;
- (4) section 3102 of this title providing for grants for public facilities;
- (5) section 1926 of Title 7;
- (6) the Public Works and Economic Development Act of 1965, as amended [42 U.S.C.A. § 3121 et seq.];
- (7) the Appalachian Regional Development Act of 1965, as amended; or
- (8) title II of the Federal Water Pollution Control Act, as amended [33 U.S.C.A. § 1281 et seq.].

(b) In the obligation of discretionary funds or funds which are not allocated among the States or political subdivisions of a State, the Secretary of Housing and Urban Development and the Secretary of Commerce shall give priority to applications for projects in major disaster areas in which a Recovery Planning Council has been designated pursuant to title VIII of the Public Works and Economic Development Act of 1965 [42 U.S.C.A. § 3231 et seq.].

(Pub.L. 93-288, Title III, § 313, May 22, 1974, 88 Stat. 150.)

Historical Note

References in Text. The Housing Amendments of 1955, referred to in subsec. (a)(1), is Act Aug. 11, 1955, c. 783, 69 Stat. 635, as amended. Title II of the Housing Amendments of 1955 is classified generally to chapter 8B (section 1491 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1955 Amendment note set out under section 1701 of Title 12, Banks and Banking, and Tables volume.

The United States Housing Act of 1937, referred to in subsec. (a)(2), is Act Sept. 1, 1937, c. 896, as revised generally by Pub.L. 93-383, Title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (section 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables volume.

The Public Works and Economic Development Act of 1965, as amended, referred to in subsec. (a)(6), is Pub.L. 89-136, Aug. 26, 1965, 79 Stat. 552, as amended, which is classified principally to chapter 38 (section 3121

et seq.) of this title. Title VIII of the Public Works and Economic Development Act of 1965, referred to in subsec. (b), is classified generally to subchapter VIII (section 3231 et seq.) of chapter 38 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables volume.

The Appalachian Regional Development Act of 1965, referred to in subsec. (a)(7), is Pub.L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which is set out in the Appendix to Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Tables volume.

The Federal Water Pollution Control Act, referred to in subsec. (a)(8), is Act June 30, 1948, c. 758, as amended generally by Pub.L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816. Title II of the Federal Water Pollution Control Act is classified generally to subchapter II (section 1281 et seq.) of chapter 26 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the

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Code, see Short Title note set out under section 1251 of Title 33 and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5154. Insurance**(a) Compliance with regulations requiring insurance coverage**

(1) An applicant for assistance under section 3233, 5172, or 5189 of this title, shall comply with regulations prescribed by the President to assure that, with respect to any property to be replaced, restored, repaired, or constructed with such assistance, such types and extent of insurance will be obtained and maintained as may be reasonably available, adequate, and necessary to protect against future loss to such property.

(2) In making his determination with respect to such availability, adequacy and necessity, the President shall not require greater types and extent of insurance than are certified to him as reasonable by the appropriate State insurance commissioner responsible for regulation of such insurance.

(b) Requirement of insurance coverage for assistance under certain provisions

No applicant for assistance under section 3233, 5172, or 5189 of this title, shall receive such assistance for any property or part thereof for which he has previously received assistance under this chapter unless all insurance required pursuant to this section has been obtained and maintained with respect to such property.

(c) States electing to be self-insurers

A State may elect to act as a self-insurer with respect to any or all of the facilities belonging to it. Such an election, if declared in writing at the time of accepting assistance under section 3233, 5172, or 5189 of this title, or subsequently, and accompanied by a plan for self-insurance which is satisfactory to the President, shall be deemed compliance with subsection (a) of this section. No such self-insurer shall receive assistance under such sections for any property or part thereof for which it has previously received assistance under this chapter, to the extent that insurance for such property or part thereof would have been reasonably available.

(Pub.L. 93-288, Title III, § 314, May 22, 1974, 88 Stat. 151.)

Historical Note

References in Text. This chapter, referred to in subsecs. (b) and (c), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5155. Duplication of benefits**(a) Financial assistance under other programs**

The President, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster, shall assure that no such person, business concern, or other entity will receive such assistance with respect to any part of such loss as to which he has received financial assistance under any other program.

(b) Insurance compensation; partial compensation

The President shall assure that no person, business concern, or other entity receives any Federal assistance for any part of a loss suffered as the result of a major disaster if such person, concern, or entity received compensation from insurance or any other source for that part of such a loss. Partial compensation for a loss or a part of a loss resulting from a major disaster shall not preclude additional Federal assistance for any part of such a loss not compensated otherwise.

(c) Reimbursement of excessive assistance

Whenever the President determines (1) that a person, business concern, or other entity has received assistance under this chapter for a loss and that such person, business concern or other entity received assistance for the same loss from another source, and (2) that the amount received from all sources exceeded the amount of the loss, he shall direct such person, business concern, or other entity to pay to the Treasury an amount, not to exceed the amount of Federal assistance received, sufficient to reimburse the Federal Government for that part of the assistance which he deems excessive.

(Pub.L. 93-288, Title III, § 315, May 22, 1974, 88 Stat. 152.)

Historical Note

References in Text. This chapter, referred to in subsec. (c), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Emergency funds for repair or reconstruction of Federal-aid highways, see 23 CFR 668.101 et seq.

§ 5156. Reviews and reports

The President shall conduct annual reviews of the activities of Federal agencies and State and local governments providing disaster preparedness and assistance, in order to assure maximum coordination and effectiveness

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of such programs, and shall from time to time report thereon to the Congress.

(Pub.L. 93-288, Title III, § 316, May 22, 1974, 88 Stat. 152.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5157. Criminal and civil penalties**(a) Fraudulent or willful misrepresentation**

Any individual who fraudulently or willfully misstates any fact in connection with a request for assistance under this chapter shall be fined not more than \$10,000 or imprisoned for not more than one year or both for each violation.

(b) Violation of orders and regulations

Any individual who knowingly violates any order or regulation under this chapter shall be subject to a civil penalty of not more than \$5,000 for each violation.

(c) Misapplication of loans and cash benefits

Whoever knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this chapter shall be subject to a fine in an amount equal to one and one-half times the original principal amount of the loan or cash benefit.

(Pub.L. 93-288, Title III, § 317, May 22, 1974, 88 Stat. 152.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

West's Federal Forms

Indictment and information, see § 7101 et seq.
Sentence and fine, see § 7531 et seq.

§ 5158. Availability of materials

The President is authorized, at the request of the Governor of an affected State, to provide for a survey of construction materials needed in the area affected by a major disaster on an emergency basis for housing repairs, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and to take appropriate action to assure the availability and fair distribution of needed materials, including, where possi-

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ble, the allocation of such materials for a period of not more than one hundred and eighty days after such major disaster. Any allocation program shall be implemented by the President to the extent possible, by working with and through those companies which traditionally supply construction materials in the affected area. For the purposes of this section "construction materials" shall include building materials and materials required for repairing housing, replacement housing, public facilities repairs and replacement, and for normal farm and business operations.

(Pub.L. 93-288, Title III, § 318, May 22, 1974, 88 Stat. 152.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

SUBCHAPTER IV—FEDERAL DISASTER ASSISTANCE PROGRAMS

§ 5171. Federal facilities

(a) Repair, reconstruction, restoration or replacement of United States facilities

The President may authorize any Federal agency to repair, reconstruct, restore, or replace any facility owned by the United States and under the jurisdiction of such agency which is damaged or destroyed by any major disaster if he determines that such repair, reconstruction, restoration, or replacement is of such importance and urgency that it cannot reasonably be deferred pending the enactment of specific authorizing legislation or the making of an appropriation for such purposes, or the obtaining of congressional committee approval.

(b) Availability of funds appropriated to agency for repair, reconstruction, restoration, or replacement of agency facilities

In order to carry out the provisions of this section, such repair, reconstruction, restoration, or replacement may be begun notwithstanding a lack or an insufficiency of funds appropriated for such purpose, where such lack or insufficiency can be remedied by the transfer, in accordance with law, of funds appropriated to that agency for another purpose.

(c) Steps for mitigation of hazards

In implementing this section, Federal agencies shall evaluate the natural hazards to which these facilities are exposed and shall take appropriate action to mitigate such hazards, including safe land-use and construction practices, in accordance with standards prescribed by the President.

(Pub.L. 93-288, Title IV, § 401, May 22, 1974, 88 Stat. 153.)

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Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title. **Legislative History.** For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code-Cong. and Adm. News, p. 3070.

Cross References

Exemptions from endangered or threatened species and habitat requirements in Presidentially declared disaster areas, see section 1536 of Title 16, Conservation.

Library References

United States 82(5).

C.J.S. United States § 122.

§ 5172. Repair and restoration of damaged facilities**(a) Public facilities of state and local governments**

The President is authorized to make contributions to State or local governments to help repair, restore, reconstruct, or replace public facilities belonging to such State or local governments which were damaged or destroyed by a major disaster.

(b) Nonprofit educational, utility, emergency, medical, and custodial care facilities

The President is also authorized to make grants to help repair, restore, reconstruct, or replace private nonprofit educational, utility, emergency, medical, and custodial care facilities, including those for the aged or disabled, and facilities on Indian reservations as defined by the President, which were damaged or destroyed by a major disaster.

(c) Facilities under completion at time of disaster

For those facilities eligible under this section which were in the process of construction when damaged or destroyed by a major disaster, the grant shall be based on the net costs of restoring such facilities substantially to their predisaster condition.

(d) Definition

For the purposes of this section, "public facility" includes any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility, any non-Federal-aid street, road, or highway, any other public building, structure, or system including those used for educational or recreational purposes, and any park.

(e) Maximum limit of grants

The Federal contribution for grants made under this section shall not exceed 100 per centum of the net cost of repairing, restoring, reconstructing, or replacing any such facility on the basis of the design of such facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications, and standards.

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(f) Decision by state or local government not to restore damaged facilities; limit on federal contribution

In those cases where a State or local government determines that public welfare would not be best served by repairing, restoring, reconstructing, or replacing particular public facilities owned or controlled by that State or that local government which have been damaged or destroyed in a major disaster, it may elect to receive, in lieu of the contribution described in subsection (e) of this section, a contribution based on 90 per centum of the Federal estimate of the total cost of repairing, restoring, reconstructing, or replacing all damaged facilities owned by it within its jurisdiction. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each such facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications and standards. Funds contributed under this subsection may be expended either to repair or restore certain selected damaged public facilities or to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area.

(Pub.L. 93-288, Title IV, § 402, May 22, 1974, 88 Stat. 153.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Cross References

Exemptions from endangered or threatened species and habitat requirements in Presidentially declared disaster areas, see section 1536 of Title 16, Conservation.

Review and revision of disaster recovery plans by Recovery Planning Council, see section 3232 of this title.

§ 5173. Debris removal

(a) The President, whenever he determines it to be in the public interest, is authorized—

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property,

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shall first agree to indemnify the Federal Government against any claim arising from such removal.

(Pub.L. 93-288, Title IV, § 403, May 22, 1974, 88 Stat. 154.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title. **Legislative History.** For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster relief, see 44 CFR 205.1 et seq.

§ 5174. Temporary housing assistance**(a) Rent free accommodations; utilities**

The President is authorized to provide, either by purchase or lease, temporary housing, including, but not limited to, unoccupied habitable dwellings, suitable rental housing, mobile homes or other readily fabricated dwellings for those who, as a result of a major disaster, require temporary housing. During the first twelve months of occupancy no rentals shall be established for any such accommodations, and thereafter rentals shall be established, based upon fair market value of the accommodations being furnished, adjusted to take into consideration the financial ability of the occupant. Any mobile home or readily fabricated dwelling shall be placed on a site complete with utilities provided either by the State or local government, or by the owner or occupant of the site who was displaced by the major disaster, without charge to the United States. The President may authorize installation of essential utilities at Federal expense and he may elect to provide other more economical or accessible sites when he determines such action to be in the public interest.

(b) Temporary mortgage or rental payments

The President is authorized to provide assistance on a temporary basis in the form of mortgage or rental payments to or on behalf of individuals and families who, as a result of financial hardship caused by a major disaster, have received written notice of dispossession or eviction from a residence by reason of foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease, entered into prior to such disaster. Such assistance shall be provided for a period of not to exceed one year or for the duration of the period of financial hardship, whichever is the lesser.

(c) Repair or restoration of owner-occupied residential structures

In lieu of providing other types of temporary housing after a major disaster, the President is authorized to make expenditures for the purpose of repairing or restoring to a habitable condition owner-occupied private residential structures made uninhabitable by a major disaster which are capable of being restored quickly to a habitable condition with minimal repairs. No assistance provided under this section may be used for major reconstruction or rehabilitation of damaged property.

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(d) Sale of temporary housing acquired by purchase

(1) Notwithstanding any other provision of law, any temporary housing acquired by purchase may be sold directly to individuals and families who are occupants of temporary housing at prices that are fair and equitable, as determined by the President.

(2) The President may sell or otherwise make available temporary housing units directly to States, other governmental entities, and voluntary organizations. The President shall impose as a condition of transfer under this paragraph a covenant to comply with the provisions of section 5151 of this title requiring nondiscrimination in occupancy of such temporary housing units. Such disposition shall be limited to units purchased under the provisions of subsection (a) of this section and to the purposes of providing temporary housing for disaster victims in emergencies or in major disasters.

(Pub.L. 93-288, Title IV, § 404, May 22, 1974, 88 Stat. 154.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster relief, see 44 CFR 205.1 et seq.

§ 5175. Protection of environment

No action taken or assistance provided pursuant to section 5145, 5146, or 5173 of this title, or any assistance provided pursuant to section 5172 or 5189 of this title that has the effect of restoring facilities substantially as they existed prior to the disaster, shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C.A. § 4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 (83 Stat. 852) to other Federal actions taken under this chapter or under any other provision of law.

(Pub.L. 93-288, Title IV, § 405, May 22, 1974, 88 Stat. 155.)

Historical Note

References in Text. The National Environmental Policy Act of 1969, referred to in text, is Pub.L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended which is classified generally to chapter 55 (section 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables volume.

This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For

complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

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PUBLIC HEALTH AND WELFARE

Library References

Health and Environment § 25.10(1).

C.J.S. Health and Environment §§ 67 et seq.,
119 et seq.

Notes of Decisions

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3. Transfer of refugees

Neither this section's exemption to the applicability of section 4332 of this title, nor the President's declaration of emergency of May 6, 1980, provided a basis for exempting from section 4332 of this title the transfer of undocumented Haitian and Cuban refugees from Florida to Fort Allen, Puerto Rico, and related federal actions. *Com. of Puerto Rico v. Muskie*, D.C. Puerto Rico 1981, 507 F.Supp. 1035, vacated on other grounds 668 F.2d 611.

1. Purpose

This section evidences a congressional intent to relieve restoration activities from environmental impact statement requirements. *Homeowners Emergency Life Protection Committee v. Lynn*, D.C. Cal. 1974, 388 F.Supp. 971, vacated on other grounds 541 F.2d 814, on remand 432 F.Supp. 1334.

4. Dismissal of complaint

Action for declaratory relief and injunction prohibiting further action on project to construct dam and reservoir until National Environmental Policy Act of 1969, section 4321 et seq. of this title, had been complied with would be dismissed in view of plaintiffs' failure to prosecute it, their failure to make discovery and their failure to participate in pre-trial preparation. *Homeowners Emergency Life Protection Committee v. Lynn*, D.C. Cal. 1977, 432 F.Supp. 1334.

2. Retroactive effect

This section exempting restoration of public facilities destroyed by major disasters from requirements of section 4332 of this title did not apply retroactively. *Homeowners Emergency Life Protection Committee v. Lynn*, C.A. Cal. 1976, 541 F.2d 814, on remand 432 F.Supp. 1334.

§ 5176. Minimum standards for public and private structures

As a condition of any disaster loan or grant made under the provisions of this chapter, the recipient shall agree that any repair or construction to be financed therewith shall be in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards, and shall furnish such evidence of compliance with this section as may be required by regulation. As a further condition of any loan or grant made under the provisions of this chapter, 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, including safe land-use and construction practices, in accordance with standards prescribed or approved by the President after adequate consultation with the appropriate elected officials of general purpose local governments, and the State shall furnish such evidence of compliance with this section as may be required by regulation.

(Pub.L. 93-288, Title IV, § 406, May 22, 1974, 88 Stat. 155.)

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42 § 5177

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster relief, see 44 CFR 205.1 et seq.

§ 5177. Unemployment assistance

(a) The President is authorized to provide to any individual unemployed as a result of a major disaster such benefit assistance as he deems appropriate while such individual is unemployed. Such assistance as the President shall provide shall be available to an individual as long as the individual's unemployment caused by the major disaster continues or until the individual is reemployed in a suitable position, but no longer than one year after the major disaster is declared. Such assistance for a week of unemployment shall not exceed the maximum weekly amount authorized under the unemployment compensation law of the State in which the disaster occurred, and the amount of assistance under this section to any such individual for a week of unemployment shall be reduced by any amount of unemployment compensation or of private income protection insurance compensation available to such individual for such week of unemployment. The President is directed to provide such assistance through agreements with States which, in his judgment, have an adequate system for administering such assistance through existing State agencies.

(b) The President is further authorized for the purposes of this chapter to provide reemployment assistance services under other laws to individuals who are unemployed as a result of a major disaster.

(Pub.L. 93-288, Title IV, § 407, May 22, 1974, 88 Stat. 156.)

Historical Note

References in Text. This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set

Code of Federal Regulations

Disaster unemployment assistance, see 20 CFR 625.1 et seq.

42 § 5178

PUBLIC HEALTH AND WELFARE

§ 5178. Individual and family grant programs

(a) Grants to states

The President is authorized to make a grant to a State for the purpose of such State making grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provisions of this chapter, or from other means. The Governor of a State shall administer the grant program authorized by this section.

(b) Matching grants by states

The Federal share of a grant to an individual or a family under this section shall be equal to 75 per centum of the actual cost of meeting such an expense or need and shall be made only on condition that the remaining 25 per centum of such cost is paid to such individual or family from funds made available by a State. Where a State is unable immediately to pay its share, the President is authorized to advance to such State such 25 per centum share, and any such advance is to be repaid to the United States when such State is able to do so. No individual and no family shall receive any grant or grants under this section aggregating more than \$5,000 with respect to any one major disaster.

(c) Regulations

The President shall promulgate regulations to carry out this section and such regulations shall include national criteria, standards, and procedures for the determination of eligibility for grants and the administration of grants made under this section.

(d) Expenditure for administering grants

A State may expend not to exceed 3 per centum of any grant made by the President to it under subsection (a) of this section for expenses of administering grants to individuals and families under this section.

(Pub.L. 93-288, Title IV, § 408(a)-(d), May 22, 1974, 88 Stat. 156.)

Historical Note

References in Text. This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section 408(e) of Pub.L. 93-288 provided that: "This section shall take effect as of April 20, 1973".

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster relief, see 44 CFR 205.1 et seq.

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42 § 5180

§ 5179. Food coupons and distribution**(a) Persons eligible; terms and conditions**

Whenever the President determines that, as a result of a major disaster, low-income households are unable to purchase adequate amounts of nutritious food, he is authorized, under such terms and conditions as he may prescribe, to distribute through the Secretary of Agriculture or other appropriate agencies coupon allotments to such households pursuant to the provisions of the Food Stamp Act of 1964 (P.L. 91-671; 84 Stat. 2048) [7 U.S.C.A. § 2011 et seq.] and to make surplus commodities available pursuant to the provisions of this chapter.

(b) Duration of assistance; factors considered

The President, through the Secretary of Agriculture or other appropriate agencies, is authorized to continue to make such coupon allotments and surplus commodities available to such households for so long as he determines necessary, taking into consideration such factors as he deems appropriate, including the consequences of the major disaster on the earning power of the households, to which assistance is made available under this section.

(c) Food Stamp Act provisions unaffected

Nothing in this section shall be construed as amending or otherwise changing the provisions of the Food Stamp Act of 1964 [7 U.S.C.A. § 2011 et seq.] except as they relate to the availability of food stamps in an area affected by a major disaster.

(Pub.L. 93-288, Title IV, § 409, May 22, 1974, 88 Stat. 157.)

Historical Note

References in Text. The Food Stamp Act of 1964, referred to in subsecs. (a) and (c), is Pub.L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (section 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 7 and Tables volume.

This chapter, referred to in subsection (a), in the original read "this Act", meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143. For

complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Administration of program, see 7 CFR 274.1 et seq.

Donation of foods, see 7 CFR 250.1 et seq.

§ 5180. Food commodities**(a) Emergency mass feeding**

The President is authorized and directed to assure that adequate stocks of food will be ready and conveniently available for emergency mass feeding or

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distribution in any area of the United States which suffers a major disaster or emergency.

(b) Funds for purchase of food commodities

The Secretary of Agriculture shall utilize funds appropriated under section 612c of Title 7, to purchase food commodities necessary to provide adequate supplies for use in any area of the United States in the event of a major disaster or emergency in such area.

(Pub.L. 93-288, Title IV, § 410, May 22, 1974, 88 Stat. 157.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Donation of foods, see 7 CFR 250.1 et seq.

§ 5181. Relocation assistance

Notwithstanding any other provision of law, no person otherwise eligible for any kind of replacement housing payment under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) [42 U.S.C.A. § 4601 et seq.] shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

(Pub.L. 93-288, Title IV, § 411, May 22, 1974, 88 Stat. 157.)

Historical Note

References in Text. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, referred to in text, is Pub.L. 91-646, Jan. 2, 1971, 84 Stat. 1894, as amended, which is classified principally to chapter 61 (section 4601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5182. Legal services

Whenever the President determines that low-income individuals are unable to secure legal services adequate to meet their needs as a consequence of a major disaster, consistent with the goals of the programs authorized by this chapter, the President shall assure that such programs are conducted with the advice and assistance of appropriate Federal agencies and State and local bar associations.

(Pub.L. 93-288, Title IV, § 412, May 22, 1974, 88 Stat. 157.)

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42 § 5184

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster relief, see 44 CFR 205.1 et seq.

§ 5183. Crisis counseling assistance and training

The President is authorized (through the National Institute of Mental Health) to provide professional counseling services, including financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers, to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath.

(Pub.L. 93-288, Title IV, § 413, May 22, 1974, 88 Stat. 157.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster assistance for crisis counseling and training, see 42 CFR 38.1 et seq.

§ 5184. Community disaster loans

(a) The President is authorized to make loans to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster, and has demonstrated a need for financial assistance in order to perform its governmental functions. The amount of any such loan shall be based on need, and shall not exceed 25 per centum of the annual operating budget of that local government for the fiscal year in which the major disaster occurs. Repayment of all or any part of such loan to the extent that revenues of the local government during the three full fiscal year period following the major disaster are insufficient to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operation character shall be cancelled.

(b) Any loans made under this section shall not reduce or otherwise affect any grants or other assistance under this chapter.

(Pub.L. 93-288, Title IV, § 414(a), (b), May 22, 1974, 88 Stat. 158.)

Historical Note

References in Text. This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Community Emergency Drought Relief. Pub.L. 95-31, Title I, May 23, 1977, 91 Stat. 169, provided:

"That this Act be cited as the 'Community Emergency Drought Relief Act of 1977'.

"Sec. 101. (a) Upon the application of any State, political subdivision of a State, Indian tribe, or public or private nonprofit organization, the Secretary of Commerce is authorized to make grants and loans to applicants in drought impacted areas for projects that implement short-term actions to augment community water supplies where there are severe problems due to water shortages. Such assistance may be for the improvement, expansion, or construction of water supplies, and purchase and transportation of water, which in the opinion of the Secretary of Commerce will make a substantial contribution to the relief of an existing or threatened drought condition in a designated area.

"(b) The Secretary of Commerce may designate any area in the United States as an emergency drought impact area if he or she finds that a major and continuing adverse drought condition exists and is expected to continue, and such condition is causing significant hardships on the affected areas.

"(c) Eligible applicants shall be those States or political subdivisions of States with a population of ten thousand or more, Indian tribes, or public or private nonprofit organizations within areas designated pursuant to subsection (b) of this section.

"(d) Projects assisted under this Act shall be only those with respect to which assurances can be given to the satisfaction of the Secretary of Commerce that the work can be completed by April 30, 1978, or within such extended time as the Secretary may approve in exceptional circumstances.

"Sec. 102. Grants hereunder shall be in an amount not to exceed 50 per centum of allowable project costs. Loans shall be for a

term not to exceed 40 years at a per annum interest rate of 5 per centum and shall be on such terms and conditions as the Secretary of Commerce shall determine. In determining the amount of a grant assistance for any project, the Secretary of Commerce may take into consideration such factors as are established by regulation and are consistent with the purposes of this Act.

"Sec. 103. In extending assistance under this Act the Secretary shall take into consideration the relative needs of applicant areas for the projects for which assistance is requested, and the appropriateness of the project for relieving the conditions intended to be alleviated by this Act.

"Sec. 104. The Secretary of Commerce shall have such powers and authorities under this Act as are vested in the Secretary by sections 701 and 708 of the Public Works and Economic Development Act of 1965, as amended [sections 3211 and 3218 of this title], with respect to that Act [section 3121 et seq. of this title].

"Sec. 105. The National Environmental Protection Act of 1969, as amended [section 4321 et seq. of this title], shall be implemented to the fullest extent consistent with but subject to the time constraints imposed by this Act, and the Secretary of Commerce when making the final determination regarding an application for assistance hereunder shall give consideration to the environmental consequences determined within that period.

"Sec. 106. (a) There is hereby authorized to be appropriated for the fiscal year ending September 30, 1977, \$225,000,000 of which sum \$150,000,000 is to be for the loan program herein, including administration thereof, and \$75,000,000 of which is to be used for the grant program herein, including administration thereof, and such additional amounts for the fiscal year ending September 30, 1978, as may be reasonably needed for administrative expenses in monitoring and closing out the program authorized by the Act. Funds authorized by this Act shall be obligated by December 31, 1977.

"(b) Funds available to the Secretary for this Act shall be available for expenditure for drought impact projects conducted heretofore by eligible applicants during fiscal year 1977 if such projects are found to be compatible with the broad purposes of this Act."

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

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42 § 5187

Code of Federal Regulations

Community disaster relief, see 13 CFR 318.1 et seq.

§ 5185. Emergency communications

The President is authorized during, or in anticipation of, an emergency or major disaster to establish temporary communications systems and to make such communications available to State and local government officials and other persons as he deems appropriate.

(Pub.L. 93-288, Title IV, § 415, May 22, 1974, 88 Stat. 158.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5186. Emergency public transportation

The President is authorized to provide temporary public transportation service in an area affected by a major disaster to meet emergency needs and to provide transportation to governmental offices, supply centers, stores, post offices, schools, major employment centers, and such other places as may be necessary in order to enable the community to resume its normal pattern of life as soon as possible.

(Pub.L. 93-288, Title IV, § 416, May 22, 1974, 88 Stat. 158.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 5187. Fire suppression grants

The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State for the suppression of any fire on publicly or privately owned forest or grassland which threatens such destruction as would constitute a major disaster.

(Pub.L. 93-288, Title IV, § 417, May 22, 1974, 88 Stat. 158.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Disaster relief, see 44 CFR 205.1 et seq.

42 § 5188

PUBLIC HEALTH AND WELFARE

§ 5188. Timber sale contracts**(a) Cost-sharing arrangement**

Where an existing timber sale contract between the Secretary of Agriculture or the Secretary of the Interior and a timber purchaser does not provide relief from major physical change not due to negligence of the purchaser prior to approval of construction of any section of specified road or of any other specified development facility and, as a result of a major disaster, a major physical change results in additional construction work in connection with such road or facility by such purchaser with an estimated cost, as determined by the appropriate Secretary, (1) of more than \$1,000 for sales under one million board feet, (2) of more than \$1 per thousand board feet for sales of one to three million board feet, or (3) of more than \$3,000 for sales over three million board feet, such increased construction cost shall be borne by the United States.

(b) Cancellation of authority

If the appropriate Secretary determines that damages are so great that restoration, reconstruction, or construction is not practical under the cost-sharing arrangement authorized by subsection (a) of this section, he may allow cancellation of a contract entered into by his Department notwithstanding contrary provisions therein.

(c) Public notice of sale

The Secretary of Agriculture is authorized to reduce to seven days the minimum period of advance public notice required by section 476 of Title 16, in connection with the sale of timber from national forests, whenever the Secretary determines that (1) the sale of such timber will assist in the construction of any area of a State damaged by a major disaster, (2) the sale of such timber will assist in sustaining the economy of such area, or (3) the sale of such timber is necessary to salvage the value of timber damaged in such major disaster or to protect undamaged timber.

(d) State grants for removal of damaged timber; reimbursement of expenses limited to salvage value of removed timber

The President, when he determines it to be in the public interest, is authorized to make grants to any State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster, and such State or local government is authorized upon application, to make payments out of such grants to any person for reimbursement of expenses actually incurred by such person in the removal of damaged timber, not to exceed the amount that such expenses exceed the salvage value of such timber.

(Pub.L. 93-288, Title IV, § 418, May 22, 1974, 88 Stat. 158.)

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42 § 5201

Historical Note

References in Text. Section 476 of Title 16, referred to in subsec. (c), was repealed by Pub.L. 94-588, § 13, Oct. 22, 1976, 90 Stat. 2958.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set

out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

Code of Federal Regulations

Application for assistance, see 43 CFR 1815.0-3 et seq.

§ 5189. Alternate contribution

In any case in which the Federal estimate of the total cost of (1) repairing, restoring, reconstructing, or replacing, under section 5172 of this title, all damaged or destroyed public facilities owned by a State or local government within its jurisdiction, and (2) emergency assistance under section 5146 of this title and debris removed under section 5173 of this title, is less than \$25,000, then on application of a State or local government, the President is authorized to make a contribution to such State or local government under the provisions of this section in lieu of any contribution to such State or local government under section 5146, 5172, or 5173 of this title. Such contribution shall be based on 100 per centum of such total estimated cost, which may be expended either to repair, restore, reconstruct, or replace all such damaged or destroyed public facilities, to repair, restore, reconstruct, or replace certain selected damaged or destroyed public facilities, to construct new public facilities which the State or local government determines to be necessary to meet its needs for governmental services and functions in the disaster-affected area, or to undertake disaster work as authorized in section 5146 or 5173 of this title. The cost of repairing, restoring, reconstructing, or replacing damaged or destroyed public facilities shall be estimated on the basis of the design of each such facility as it existed immediately prior to such disaster and in conformity with current applicable codes, specifications and standards.

(Pub.L. 93-288, Title IV, § 419, May 22, 1974, 88 Stat. 159.)

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

SUBCHAPTER V—MISCELLANEOUS**§ 5201. Rules and regulations; acceptance of gifts**

(a) The President may prescribe such rules and regulations as may be necessary and proper to carry out any of the provisions of this chapter, and he may exercise any power or authority conferred on him by any section of this chapter either directly or through such Federal agency or agencies as he may designate.

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PUBLIC HEALTH AND WELFARE

(b) In furtherance of the purposes of this chapter, the President or his delegate may accept and use bequests, gifts, or donations of service, money, or property, real, personal, or mixed, tangible, or intangible. All sums received under this subsection shall be deposited in a separate fund on the books of the Treasury and shall be available for expenditure upon the certification of the President or his delegate. At the request of the President or his delegate, the Secretary of the Treasury may invest and reinvest excess monies in the fund. Such investments shall be in public debt securities with maturities suitable for the needs of the fund and shall bear interest at rates determined by the Secretary of the Treasury, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities. The interest on such investments shall be credited to, and form a part of, the fund.

(Pub.L. 93-288, Title VI, § 601, May 22, 1974, 88 Stat. 163; Pub.L. 96-446, § 1(2), (3), Oct. 13, 1980, 94 Stat. 1893.)

Historical Note

References in Text. This chapter, referred to in text, in the original read "this Act", meaning Pub.L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

1980 Amendment. Subsec. (a). Pub.L. 96-446, § 1(2), designated existing provisions as subsec. (a).

Subsec. (b). Pub.L. 96-446, § 1(3), added subsec. (b).

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070. See also, Pub.L. 96-446, 1980 U.S. Code Cong. and Adm. News, p. 3977.

Code of Federal Regulations

Disaster preparedness aid, see 44 CFR 300.1 et seq.
New communities, assistance, see 24 CFR 720.1 et seq.
Temporary housing, see 44 CFR 206.1 et seq.

§ 5202. Authorization of appropriations

Except as provided by the amendment made by section 501, there are authorized to be appropriated to the President such sums as may be necessary to carry out this chapter through the close of September 30, 1981, and to the Federal Emergency Management Agency such sums as may be necessary for administrative expenses through the close of September 30, 1981.

(Pub.L. 93-288, Title VI, § 606, May 22, 1974, 88 Stat. 164; Pub.L. 95-51, § 1, June 20, 1977, 91 Stat. 233; Pub.L. 96-568, § 2, Dec. 22, 1980, 94 Stat. 3334.)

Historical Note

References in Text. The amendment made by section 501, referred to in text, means the enactment of subchapter VIII (section 3231 et seq.) of chapter 38 of this title by section 501 of Pub.L. 93-288.

This chapter, referred to in text, in the original read "this Act", meaning Pub.L.

93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables volume.

1980 Amendment. Pub.L. 96-568 extended authorization from Sept. 30, 1980, to Sept.

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30, 1981, and added authorization for Federal Emergency Management Agency.

1977 Amendment. Pub.L. 95-51 substituted "September 30, 1980" for "June 30, 1977".

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as an Effective Date note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070. See, also, Pub.L. 95-51, 1977 U.S. Code Cong. and Adm. News, p. 353; Pub.L. 96-568, 1980 U.S. Code Cong. and Adm. News, p. 6925.

2. Emergency Relief for Federal-Aid Roads, 23 U.S.C.A. § 125.

§ 125. Emergency relief

(a) An emergency fund is authorized for expenditure by the Secretary, subject to the provisions of this section and section 120 of this title, for the repair or reconstruction of highways, roads, and trails which the Secretary shall find have suffered serious damage as the result of (1) natural disaster over a wide area such as by floods, hurricanes, tidal waves, earthquakes, severe storms, or landslides, or (2) catastrophic failures from any external cause, in any part of the United States. In no event shall funds be used pursuant to this section for the repair or reconstruction of bridges which have been permanently closed to all vehicular traffic by the State or responsible local official because of imminent danger of collapse due to structural deficiencies or physical deterioration. Subject to the following limitations, there is hereby authorized to be appropriated from the Highway Trust Fund such sums as may be necessary to establish the fund authorized by this section and to replenish it on an annual basis: (1) Not more than \$50,000,000 is authorized to be expended in any fiscal year ending before June 1, 1976, to carry out the provisions of this section and to be expended in any one fiscal year commencing after June 30, 1972, and ending before June 1, 1976, to carry out the provisions of this section and an additional amount not to exceed \$100,000,000 is further authorized to be expended in the fiscal year ending June 30, 1973, to carry out the provisions of this section, and not more than \$25,000,000 for the three-month period beginning July 1, 1976, and ending September 30, 1976, is authorized to be expended to carry out the provisions of this section, and not more than \$100,000,000 is authorized to be expended in any one fiscal year commencing after September 30, 1976, and not more than \$100,000,000 is authorized to be expended in any one fiscal year commencing after September 30, 1980, to carry out the provisions of this section, except that, if in any fiscal year the total of all expenditures under this section is less than the amount authorized to be expended in such fiscal year, the unexpended balance of such amount shall remain available for expenditure during the next two succeeding fiscal years in addition to amounts otherwise available to carry out this section in such years, and (2) prior to the fiscal year ending September 30, 1978, 60 per centum of the expenditures under this section for any fiscal year are authorized to be appropriated

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HIGHWAYS

from the Highway Trust Fund and the remaining 40 per centum of such expenditures are authorized to be appropriated only from any moneys in the Treasury not otherwise appropriated, and for any fiscal year thereafter, 100 per centum of such expenditures are authorized to be appropriated out of the Highway Trust Fund. For the purposes of this section the period beginning July 1, 1976, and ending September 30, 1976, shall be deemed to be a part of the fiscal year ending September 30, 1977. Pending such appropriation or replenishment the Secretary may expend from any funds heretofore or hereafter appropriated for expenditure in accordance with the provisions of this title including existing Federal-aid appropriations, such sums as may be necessary for the immediate prosecution of the work herein authorized, such appropriations to be reimbursed from the appropriations herein authorized when made.

(b) The Secretary may expend funds from the emergency fund herein authorized for the repair or reconstruction of highways on the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors, in accordance with the provisions of this chapter: *Provided*, That obligations for projects under this section, including those on highways, roads, and trails mentioned in subsection (c) of this section, resulting from a single natural disaster or a single catastrophic failure shall not exceed \$30,000,000 in any State. Notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on the Interstate System, the Primary System, and on any routes functionally classified as arterials or major collectors. Except as to highways, roads, and trails mentioned in subsection (c) of this section, no funds shall be so expended unless the Secretary has received an application therefor from the State highway department, and unless an emergency has been declared by the Governor of the State and concurred in by the Secretary, except that if the President has declared such emergency to be a major disaster for the purposes of the Disaster Relief Act of 1974 (Public Law 93-288) concurrence of the Secretary is not required.

(c) The Secretary may expend funds from the emergency fund herein authorized, either independently or in cooperation with any other branch of the Government, State agency, organization, or person, for the repair or reconstruction of forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads, whether or not such highways, roads, or trails are routes functionally classified as arterials or major collectors.

As amended Pub.L. 89-574, § 9(b), (c), Sept. 13, 1966, 80 Stat. 769; Pub.L. 90-495, § 27(a), Aug. 23, 1968, 82 Stat. 829; Pub.L. 91-605, Title I, § 109(a), Dec. 31, 1970, 84 Stat. 1718; Pub.L. 92-361, Aug. 3, 1972, 86 Stat. 503; Pub.L. 94-280, Title I, § 119, May 5, 1976, 90 Stat. 437; Pub.L. 95-599, Title I, § 119, Nov. 6, 1978, 92 Stat. 2700; Pub.L. 96-106, § 19, Nov. 9, 1979, 93 Stat. 799; Pub.L. 97-424, Title I, § 153 (a), (c), (d), (h), Jan. 6, 1983, 96 Stat. 2132, 2133.

References in Text, Disaster Relief Act of 1974, referred to in subsec. (b), is classified to chapter 48 of Title 42, The Public Health and Welfare.

1979 Amendment, Subsec. (b), Pub.L. 96-106 added provision that notwithstanding any provision of this chapter actual and necessary costs of maintenance and operation of ferryboats providing temporary substitute highway traffic service, less the amount of fares charged, may be expended from the emergency fund herein authorized on the Federal-aid highway systems, including the Interstate System.

1978 Amendment, Subsec. (a), Pub.L. 95-599 inserted "prior to the fiscal year ending September 30, 1978" following "such years, and (2)"; and added provision authorizing appropriations of 100 percent of expenditures out of the Highway Trust Fund.

1976 Amendment, Subsec. (a), Pub.L. 94-280, § 119(a), inserted ", and ending before June 1, 1976," after "June 30, 1972," authorized expenditure of not more than \$25,000,000 for the three-month period beginning July 1, 1976, and ending September 30, 1976, and not more than \$100,000,000 in any one fiscal year commencing after September 30, 1976, and inserted provision that for the purposes of this section the period beginning July 1, 1976, and ending September 30, 1976, shall be deemed to be a part of the fiscal year ending September 30, 1977.

3. Section 1362 of the National Flood Insurance Act, as Amended (42 U.S.C.A. § 4103) - Purchase of Insured Properties Damaged Substantially Beyond Repair by Flood

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SUBCHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

§§ 4101, 4102.

Transfer of Functions. All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency under section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41971, 92 Stat. 9808, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4103. Purchase of insured properties damaged substantially beyond repair by flood

(a) Transfers to State or local agencies for use for prescribed period consistent with sound land management and use

The Secretary may, when he determines that the public interest would be served thereby, enter into negotiations with any owner of real property or interest therein which—

- (1) was located in any flood-risk area, as determined by the Secretary,
- (2) was covered by flood insurance under the flood insurance program authorized under this chapter, and
- (3) incurred significant flood damage on not less than three previous occasions over a five-year period of time and on each occasion the cost of repair, on the average, equaled or exceeded 25 per centum of the value of the structure at the time of each flood event or was damaged substantially beyond repair by flood while so covered,

and may purchase such property or interests therein, for subsequent transfer, by sale, lease, donation, or otherwise, to any State or local agency which enters into an agreement with the Secretary that such property shall, for a period not less than forty years following transfer, be used for only such purposes as the Secretary may, by regulation, determine to be consistent with sound land management and use in such area.

(b) Real property purchases; single casualty damages

When any real property referred to in paragraphs (1) and (2) of subsection (a) of this section has sustained damage as a result of a single casualty of any nature under such circumstances that a statute, ordinance or regulation precludes its repair or restoration or permits repair or restoration only at a significantly increased construction cost, the Secretary may enter into negotiations with the owner of the property or interest therein for the purchase of such property for the uses and purposes of this section.

(c) Low-interest loans for single-family dwellings; authorization of appropriations

Whenever, as a result of damage from any casualty, the repair, reconstruction, or substantial improvement of any single-family dwelling structure located within a regulatory floodway and insured under the flood insurance program is deemed by the Secretary to be made more effective from the standpoint of prudent flood plain management by elevation of the structure so it will not interfere with the flow of water from the base flood within such regulatory floodway, the Secretary is authorized to make a low-interest loan at a rate of interest of 2 per centum per annum, repayable in ten years, to the owner of any such structure for the purpose of so elevating the structure. There is authorized to be appropriated for purposes of implementing this subsection not to exceed \$4,500,000.

(d) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the purposes of this section.

(As amended Pub.L. 95-128, Title VII, § 704(b), Oct. 12, 1977, 91 Stat. 1145.)

References in Text. This chapter, referred to in subsec. (a)(2), is Pub.L. 90-448, Title XIII, Aug. 1, 1968, 82 Stat. 572, known as the National Flood Insurance Act of 1968, which enacted this chapter, amended section 2414 of this title, repealed sections 2401 to 2413 and 2415 to

Title 42, United States Code Annotated

4. Economic Recovery for Disaster Areas, Title VIII of the Public Works and Economic Development Act of 1965, as amended by the Disaster Relief Act of 1974; (42 U.S.C.A. § § 3231 to 3236).

SUBCHAPTER VIII—ECONOMIC RECOVERY FOR DISASTER
AREAS**§ 3231. Congressional statement of purpose**

(a) It is the purpose of this subchapter to provide assistance for the economic recovery, after the period of emergency aid and replacement of essential facilities and services, of any major disaster area

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which has suffered a dislocation of its economy of sufficient severity to require (1) assistance in planning for development to replace that lost in the major disaster; (2) continued coordination of assistance available under Federal-aid programs; and (3) continued assistance toward the restoration of the employment base.

(b) As used in this subchapter, the term "major disaster" means a major disaster declared by the President in accordance with the Disaster Relief Act of 1974.

Pub.L. 89-136, Title VIII, § 801, as added Pub.L. 93-288, Title V, § 501, May 22, 1974, 88 Stat. 160.

Historical Note

References in Text. The Disaster Relief Act of 1974, referred to in subsec. (b), is Pub.L. 93-288, which enacted this subchapter and chapter 48 (section 5121 et seq.) of this title. Provisions for the President's declaration of the existence of a major disaster are contained in section 5141 of this title.

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as a note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 3232. Disaster recovery planning

Recovery Planning Council; designation; membership

(a)(1) In the case of any area affected by a major disaster the Governor may request the President for assistance under this subchapter. The Governor, within thirty days after authorization of such assistance by the President, shall designate a Recovery Planning Council for such area or for each part thereof.

(2) Such Recovery Planning Council shall be composed of not less than five members, a majority of whom shall be local elected officials of political subdivisions within the affected areas, at least one representative of the State, and a representative of the Federal Government appointed by the President in accordance with paragraph (3) of this subsection. During the major disaster, the Federal coordinating officer shall also serve on the Recovery Planning Council.

(3) The Federal representative on such Recovery Planning Council may be the Chairman of the Federal Regional Council for the affected area, or a member of the Federal Regional Council designated by the Chairman of such Regional Council. The Federal representative on such Recovery Planning Council may be the Federal Cochairman of the Regional Commission established pursuant to subchapter V of this chapter, or the Appalachian Regional Development Act of 1965, or his designee, where all of the area affected by a major disaster is within the boundaries of such Commission.

(4) The Governor may designate an existing multijurisdictional organization as the Recovery Planning Council where such organization

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complies with paragraph (2) of this subsection with the addition of State and Federal representatives except that if all or part of an area affected by a major disaster is within the jurisdiction of an existing multijurisdictional organization established under subchapter IV of this chapter or title III of the Appalachian Regional Development Act of 1965, such organization, with the addition of State and Federal representatives in accordance with paragraph (2) of this subsection, shall be designated by the Governor as the Recovery Planning Council. In any case in which such title III or subchapter IV organization is designated as the Recovery Planning Council under this paragraph, some local elected officials of political subdivisions within the affected areas must be appointed to serve on such Recovery Planning Council. Where possible, the organization designated as the Recovery Planning Council shall be or shall be subsequently designated as the appropriate agency required by section 3334 of this title and by the Intergovernmental Cooperation Act of 1968.

(5) The Recovery Planning Council shall include private citizens as members to the extent feasible, and shall provide for and encourage public participation in its deliberations and decisions.

Review and revision of plans

(b) The Recovery Planning Council (1) shall review existing plans for the affected area; and (2) may recommend to the Governor and responsible local governments such revisions as it determines necessary for the economic recovery of the area, including the development of new plans and the preparation of a recovery investment plan for the 5-year period following the declaration of the major disaster. The Recovery Planning Council shall accept as one element of the recovery investment plans determinations made under section 5172(f) of this title.

Recovery investment plan; reserve funds

(c)(1) A recovery investment plan prepared by a Recovery Planning Council may recommend the revision, deletion, reprogramming, or additional approval of Federal-aid projects and programs within the area—

(A) for which application has been made but approval not yet granted;

(B) for which funds have been obligated or approval granted but construction not yet begun;

(C) for which funds have been or are scheduled to be apportioned within the five years after the declaration of the disaster;

(D) which may otherwise be available to the area under any State schedule or revised State schedule of priorities; or

(E) which may reasonably be anticipated as becoming available under existing programs.

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(2) Upon the recommendation of the Recovery Planning Council and the request of the Governor, any funds for projects or programs identified pursuant to paragraph (1) of this subsection may, to any extent consistent with appropriation Acts, be placed in reserve by the responsible Federal agency for use in accordance with such recommendations. Upon the request of the Governor and with the concurrence of affected local governments, such funds may be transferred to the Recovery Planning Council to be expended in the implementation of the recovery investment plan, except that no such transfer may be made unless such expenditure is for a project or program for which such funds originally were made available by an appropriation Act. Pub.L. 89-136, Title VIII, § 802, as added Pub.L. 93-288, Title V, § 501, May 22, 1974, 88 Stat. 160.

Historical Note

References in Text. The Appalachian Regional Development Act of 1965, referred to in subsec. (a)(3), (4), is Pub.L. 89-4, Mar. 9, 1965, 79 Stat. 5, which is set out in the Appendix to Title 40, Public Buildings, Property, and Works.

The Intergovernmental Cooperation Act of 1968, referred to in subsec. (a)(4), is Pub.L. 90-577, which is classified to chapter 52 (section 4201 et seq.) of this title.

Effective Date. Section effective April 1, 1974, see section 605 of Pub.L. 93-288, set out as a note under section 5121 of this title.

Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 3233. Public works and development facilities grants and loans

Funds for recovery investment plans

(a) The President is authorized to provide funds to any Recovery Planning Council for the implementation of a recovery investment plan by public bodies. Such funds may be used—

(1) to make loans for the acquisition or development of land and improvements for public works, public service, or development facility usage, including the acquisition or development of parks or open spaces, and the acquisition, construction, rehabilitation, alteration, expansion, or improvement of such facilities, including related machinery and equipment, and

(2) to make supplementary grants to increase the Federal share for projects for which funds are reserved pursuant to section 3232(c)(2) of this title, or other Federal-aid projects in the affected area.

Eligible entities for grants and loans

(b) Grants and loans under this section may be made to any State, local government, or private or public nonprofit organization representing any area or part thereof affected by a major disaster.

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Federal share, increase by supplementary grants: limits

(c) No supplementary grant shall increase the Federal share of the cost of any project to greater than 90 per centum, except in the case of a grant for the benefit of Indians or Alaska Natives, or in the case of any State or local government which the President determines has exhausted its effective taxing and borrowing capacity.

Interest rate

(d) Loans under this section shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, less 1 per centum per annum.

Assistance resulting in relocation of establishments or divestiture of contractors prohibited

(e) Financial assistance under this subchapter shall not be extended to assist establishments relocating from one area to another or to assist subcontractors whose purpose is to divest, or whose economic success is dependent upon divesting, other contractors or subcontractors of contracts therefore customarily performed by them. Such limitations shall not be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the Secretary of Commerce finds that the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment of the area of original location or in any other area where such entity conducts business operations, unless the Secretary has reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area of its original location or in any other area where it conducts such operations.

Pub.L. 89-136, Title VIII, § 803, as added Pub.L. 93-288, Title V, § 501, May 22, 1974, 88 Stat. 161.

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as a note under section 5121 of this title.
Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 3234. Loan guarantees

The President is authorized to provide funds to Recovery Planning Councils to guarantee loans made to private borrowers by private lending institutions (1) to aid in financing any project within an area affected by a major disaster for the purchase or development of land

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and facilities (including machinery and equipment) for industrial or commercial usage including the construction of new buildings, and rehabilitation of abandoned or unoccupied buildings, and the alteration, conversion, or enlargement of existing buildings; and (2) for working capital in connection with projects in areas assisted under paragraph (1), upon application of such institution and upon such terms and conditions as the President may prescribe. No such guarantee shall at any time exceed 90 per centum of the amount of the outstanding unpaid balance of such loan.

Pub.L. 89-136, Title VIII, § 804, as added Pub.L. 93-288, Title V, § 501, May 22, 1974, 88 Stat. 162.

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93-288, set out as a note under section 5121 of this title.
Legislative History. For legislative history and purpose of Pub.L. 93-288, see 1974 U.S. Code Cong. and Adm. News, p. 3070.

§ 3235. Technical assistance

Projects for economic recovery

(a) In carrying out the purposes of this subchapter the President is authorized to provide technical assistance which would be useful in facilitating economic recovery in areas affected by major disasters. Such assistance shall include project planning and feasibility studies, management and operational assistance, and studies evaluating the needs of, and developing potentialities for, economic recovery of such areas. Such assistance may be provided by the President directly, through the payment of funds authorized for this subchapter to other departments or agencies of the Federal Government, through the employment of private individuals, partnerships, firms, corporations, or suitable institutions, under contracts entered into for such purposes, or through grants-in-aid to appropriate public or private nonprofit State, area, district, or local organizations.

Grants for federal share of administrative expenses

(b) The President is authorized to make grants to defray not to exceed 75 per centum of the administrative expenses of Recovery Planning Councils designated pursuant to section 3232 of this title. In determining the amount of the non-Federal share of such costs or expenses, the President shall give due consideration to all contributions both in cash and in kind, fairly evaluated, including but not limited to space, equipment, and services. Where practicable, grants-in-aid authorized under this subsection shall be used in conjunction with other available planning grants, to assure adequate and effective planning and economical use of funds.

Pub.L. 89-136, Title VIII, § 805, as added Pub.L. 93-288, Title V, § 501, May 22, 1974, 88 Stat. 162.

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Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93 288, set out as a note under section 5121 of this title.
Legislative History. For legislative history and purpose of Pub.L. 93 288, see 1971 U.S.Code Cong. and Adm.News, p. 3070.

REPEALED § 3236. Authorization of appropriations

There is authorized to be appropriated not to exceed \$250,000,000 to carry out this subchapter.

Pub.L. 89 136, Title VIII, § 806, as added Pub.L. 93 288, Title V, § 501, May 22, 1974, 88 Stat. 163.

Historical Note

Effective Date. Section effective Apr. 1, 1974, see section 605 of Pub.L. 93 288, set out as a note under section 5121 of this title.
Legislative History. For legislative history and purpose of Pub.L. 93 288, see 1971 U.S.Code Cong. and Adm.News, p. 3070.

Appendix II

Federal Disaster Assistance Programs Regulations

1. Federal Disaster Assistance (PL 93-288): 44 Code of Federal Regulations, Part 205.

Part 205

Title 44—Emergency Management and Assistance

than \$1,000 are not to be submitted more often than quarterly.

(b) Requests for reimbursement shall be in sufficient detail to identify and segregate: (1) Personal services, (2) travel, and (3) all other expenses. Supporting documentation shall include a breakdown of eligible personal services, list of contracts and an explanation of other costs. The reimbursement request shall cite the specific directive or request for assistance, issued by the Associate Director or Regional Director, under which costs were incurred, the State and location in which the work was performed, and the disaster identification number.

(c) All requests for reimbursement shall be submitted to the Regional Director of the Region for which costs were incurred.

PART 205—FEDERAL DISASTER ASSISTANCE (PUBLIC LAW 93-288)

Subpart A—General

Sec.

- 205.1 Purpose.
- 205.2 Definitions.
- 205.3 Policy.
- 205.4 State emergency plans.
- 205.5 Assistance by Federal agencies.
- 205.6 Federal equipment and supplies.
- 205.7 Use and coordination of relief organizations.
- 205.8—205.9 [Reserved]
- 205.10 Duplication of benefits.
- 205.11 Nonliability of the Federal Government.
- 205.12 Criminal and civil penalties.
- 205.13 Reviews and reports.
- 205.14 Appeals.
- 205.15 Effective date.
- 205.18 Nondiscrimination in disaster assistance.
- 205.17 Coordinating Officers.
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Subpart B—Emergencies

- 205.23 General.
- 205.24 Requests for emergency assistance.
- 205.25 Processing of State requests.
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- 205.27 Federal-State agreements.
- 205.28 Emergency mass care.
- 205.33 Time limitations. [Reserved]

Subpart C—[Reserved]

Subpart D—Major Disasters

Sec.

- 205.39 General.
- 205.40 Definitions.
- 205.41 Requests for major disaster assistance.
- 205.42 Processing a request of a Governor for a declaration of a "major disaster".
- 205.43 Initiation of Federal assistance.
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- 205.45 Temporary housing assistance.
- 205.46 Disaster legal services.
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- 205.49 Food commodities.
- 205.50 Relocation assistance.
- 205.51 Crisis counseling assistance and training.
- 205.54 Individual and family grants (IFG) programs.

Subpart E—Public Assistance

- 205.70 General.
- 205.71 Definitions.
- 205.72 Applicant eligibility.
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- 205.74 Emergency work.
- 205.75 Permanent work.
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Subpart F—Community Disaster Loans.

- 205.90 Purpose.
- 205.91 Loan program.
- 205.92 Responsibilities.
- 205.93 Eligibility criteria.
- 205.94 Loan application.
- 205.95 Loan administration.
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- 205.97 Loan repayment.

Subpart G—Fire Suppression Assistance

- 205.100 General.
- 205.101 Federal-State agreements.
- 205.102 Request for assistance.
- 205.103 Providing assistance.
- 205.104 Reimbursement.

Subpart H—Project Administration

- 205.110 General.
- 205.111 Definitions.
- 205.112 Implementation of OMB Circular A-102 (Rev.).
- 205.113 Federal grant assistance.
- 205.114 Project applications.
- 205.115 Documentation.
- 205.116 Project performance.
- 205.117 Final inspections.
- 205.118 Claims for reimbursement.
- 205.119 Federal funding.
- 205.120 Appeals.

Chapter I—Federal Emergency Management Agency

§ 205.2

- Sec.**
 205.121 Direct Federal assistance.
 205.122 Availability of materials.

Subpart I—Reimbursement of Other Federal Agencies

- 205.150 Purpose.
 205.151 Assistance from other Federal agencies.
 205.152 Expenditures eligible for reimbursement.
 205.153 Procedures for reimbursement.

Subpart J—General Insurance Requirements

- 205.200 General.
 205.201 Definitions.
 205.202 Exclusions.
 205.203 Applicability.
 205.204 Type of insurance.
 205.205 Extent of insurance.
 205.206 Duration of insurance coverage.
 205.207 Assurances for categorical grants.
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Subpart K—Flood Insurance Requirements

- 205.250 General.
 205.251 Definitions.
 205.252 Exclusions.
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Subpart L—[Reserved]

Subpart M—Hazard Mitigation

- 205.400 General.
 205.401 Definitions.
 205.402 Implementing actions.
 205.403 Responsibilities.
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 205.407 Land use regulations.
 205.408 Construction practices.
 205.409 Consultations.
 205.410 Compliance.
 205.411 Evaluation.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (79 Stat. 670, 42 U.S.C. 3535(d)); Reorganization Plan No. 3 of 1978 (43 FR 41943); Executive Order 12127, dated March 31, 1978 (44 FR 19367); Executive Order 12148, dated July 20, 1979, unless otherwise noted.

SOURCE: 40 FR 23253, May 28, 1975, unless otherwise noted. Redesignated at 44 FR 56172, Sept. 28, 1979.

Subpart A—General

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 163 (42

U.S.C. 5201); Executive Order 12148; and Delegation of Authority, 44 FR 44792.

SOURCE: 45 FR 53335, Aug. 11, 1980, unless otherwise noted

§ 205.1 Purpose.

The purpose of this part is to prescribe the standards and procedures to be followed in implementing those sections of Pub. L. 93-288 assigned to the Director, Federal Emergency Management Agency (FEMA) by Executive Order 12148 and delegated to the Associate Director, FEMA.

§ 205.2 Definitions.

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

(1) "The Act" means the Disaster Relief Act of 1974 Pub. L. 93-288, as amended; 42 U.S.C. 5121 *et seq.*

(2) "Applicant" (a) for public assistance (Subpart E) means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action, and (b) for individual assistance (Subpart D) means an individual or family who submits an application or request for assistance under the Act.

(3) "Associate Director" means the Associate Director for State and Local Programs and Support, FEMA, or his/her designated representative.

(4) "Contractor" means any individual, partnership, corporation, agency, or other entity (other than an organization engaged in the business of insurance) performing work by contract for the Federal Government or a State or local agency.

(5) "Designated area" means any emergency or disaster-affected portion of a State which the Associate Director has determined is eligible for Federal assistance.

(6) "Director" means the Director, FEMA.

(7) "Disaster Recovery Manager" means the person appointed to exercise the authority of a Regional Director for a particular emergency or major disaster.

(8) "Emergency" means any hurricane, tornado, storm, flood, high

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water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which requires Federal emergency assistance to supplement State and local efforts to save lives and protect property, public health and safety or to avert or lessen the threat of a major disaster. For the purpose of these regulations, an emergency exists when the President so determines.

(9) "Federal agency" means any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but shall not include the American National Red Cross.

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

(11) "Governor" means the chief executive of any State or the Acting Governor.

(12) "Governor's Authorized Representative" means the person named by the Governor in the Federal-State Agreement to execute on behalf of the State all necessary documents for disaster assistance and evaluate and to transmit local government, eligible private non-private facility, and State agency requests for assistance to the Regional Director following a major disaster or emergency declaration.

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

(14) "Major disaster" means any hurricane, lornado, storm, flood, high-water, wind-driven water, tidal wave tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of

the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act, above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

(15) "Private nonprofit organization" means any nongovernmental agency or entity that currently has (i) an effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under Section 501 (c), (d), or (e) of the Internal Revenue Code of 1954 or (ii) satisfactory evidence from the State that the organization or entity is a nonprofit one organized or doing business under State law.

(16) "Public facility" means any publicly owned flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational or recreational purposes, or any park.

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

(18) "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands.

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

(20) "State emergency plan" as used in Section 301(b) of the Act means that State plan which is designated specifically for State-level response to emergencies or major disasters and which sets forth actions to be taken by the State and local governments, in-

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cluding those for implementing Federal disaster assistance.

(21) "Temporary housing" means emergency or temporary accommodations provided by the Federal Government to individuals or families made homeless by an emergency or a major disaster (see § 205.52).

(22) "United States" means the 50 States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(23) "Voluntary organization" means any chartered or otherwise duly recognized tax-exempt local, State, or national organization or group which has provided or may provide needed services to the States, local governments, or individuals in coping with a disaster.

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

[45 FR 53335, Aug. 11, 1980, as amended at 46 FR 45138, Sept. 10, 1981]

§ 205.3 Policy.

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

(1) Providing Federal assistance for public and private losses and needs sustained from disasters;

(2) Encouraging the development of comprehensive disaster preparedness and assistance plans, programs, capabilities, and organizations by the States and local governments;

(3) Achieving greater coordination and responsiveness of disaster preparedness and relief programs;

(4) Encouraging individuals, States, and local governments to obtain insurance coverage and thereby reduce their dependence on governmental assistance;

(5) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of

wetlands, and environmental planning, to reduce losses from disasters.

(b) It is also the policy of FEMA to foster the development of State and local government organizations and plans for coping with disasters, and to provide advice and guidance to Federal agencies and States and local governments on organization and preparedness to meet the effects of disasters.

(c) It is further a policy of FEMA to ensure that the individual disaster victims are informed of available Federal assistance and to assist individual victims in obtaining the Federal assistance to which they are entitled. Through coordination of all Federal programs and procedures, FEMA shall facilitate, wherever possible, the victims' understanding of these programs and simplify any actions required on the part of those victims who apply for assistance.

§ 205.4 State emergency plans.

The State shall set forth in the State's emergency plan all responsibilities and actions specified in the Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to disasters and to facilitate the delivery of Federal disaster assistance.

§ 205.5 Assistance by Federal agencies.

(a) Upon the declaration of a major disaster or an emergency by the President, the Associate Director or the Regional Director may direct any Federal agency to provide assistance to State and local governments by:

(1) Utilizing or lending their equipment, supplies, facilities, personnel, and other resources, other than the extension of credit under the authority of any act;

(2) Distributing medicine, food, and other consumable supplies; and

(3) Rendering assistance under the authority of the Act. Such assistance is provided with or without compensation as considered appropriate by the Associate Director or Regional Director under the provisions of "Subpart I—Reimbursement of Other Federal Agencies" of these regulations.

(b) Federal agencies shall provide any reports or information about dis-

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aster assistance rendered under provisions of these regulations, that the FCO or Regional Director considers necessary and requests from the agencies.

(c) Assistance furnished by any Federal agency under paragraph (a) of this section is subject to the eligibility criteria provided by the Associate Director under these regulations and other instructions as the Associate Director or Regional Director may issue.

(d) Assistance under paragraph (a) of this section, when directed by the Associate Director or the Regional Director, shall not affect the authority of any Federal agency to provide disaster assistance independent of the Act. However, disaster assistance by other Federal agencies is subject to the coordination of the Federal Coordinating Officer.

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

(f) Eligible work under the provisions of the Act is not performed by or under the direct supervision of a Federal agency except when the State or local government lacks the capability to perform or contract for the approved work or the Regional Director determines that direct assistance is necessary to meet an immediate threat to life, health, or safety. (See § 205.121, Direct Federal Assistance.)

§ 205.6 Federal equipment and supplies.

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

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government.

The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

(c) In providing assistance under the Act, the Federal Government shall use surplus Federal property to the fullest extent feasible.

§ 205.7 Use and coordination of relief organizations.

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

(b) In any major disaster or emergency, the Regional Director may provide assistance by distributing or rendering through the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations medicine, food, and other consumable supplies or emergency services.

(c) The Associate Director may enter into agreements with the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations under which the Federal Coordinating Officer may coordinate the disaster relief activities of such organizations whenever the organizations are engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions assuring that use of Federal facilities, supplies, and services will be in compliance with § 205.16 (non-discrimination) and § 205.10 (Duplication of Benefits) of these regulations and such other regulations as the Associate Director may issue.

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(d) Nothing contained in this section shall be construed to limit or in any way affect the responsibilities of the American National Red Cross as stated in Pub. L. 58-4, approved January 5, 1905 (33 Stat. 599).

§§ 205.8—205.9 [Reserved]**§ 205.10 Duplication of benefits.**

(a) The Associate Director, in consultation with the head of each Federal agency administering any program providing financial assistance to persons, business concerns, or other entities suffering losses as the result of a major disaster or emergency, shall establish policies to assure that no person, business concern, or other entity receives any Federal assistance for any part of a loss suffered as the result of a major disaster or emergency, if such person, business concern, or other entity received compensation from insurance or any other source for that part of the loss. Partial compensation for a loss or a part of a loss suffered as the result of a major disaster or emergency shall not preclude additional Federal assistance for any part of the loss not compensated otherwise.

(b) [Reserved]

(c) The Regional Director and the Federal Coordinating Officer shall assure that no Federal assistance is provided under the Act for any part of a loss for which the applicant has been compensated from another source, as imposed by the duplication of benefits policies established by the Associate Director.

(d) Whenever the Associate Director, Regional Director or Federal Coordinating Officer determines (1) that a person, business concern, or other entity has received assistance both under this Act and from another source for the same loss and (2) that the amount received from all sources exceeded the amount of the loss, the Associate Director, Regional Director or Federal Coordinating Officer shall direct the person, business concern, or other entity to pay to the Treasury an amount, not to exceed the amount of Federal assistance received, sufficient to reimburse the Federal Government for that part of the assistance which exceeds the loss.

§ 205.11 Nonliability.

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

§ 205.12 Criminal and civil penalties.

(a) Any individual who fraudulently or willfully misstates any fact in connection with a request for assistance under the Act shall be fined not more than \$10,000 or imprisoned for not more than one year or both for each violation.

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

(c) Whoever knowingly missapplies the proceeds of a loan or other cash benefit obtained under any section of the Act shall be subject to a fine in an amount equal to one and one-half the times the original principal amount of the loan or cash benefit.

§ 205.13 Reviews and reports.

(a) The Associate Director shall review the activities of Federal agencies and State and local governments providing disaster assistance, in order to assure maximum coordination and effectiveness of such programs, and shall report to Congress from time to time on these activities.

(b) In carrying out this provision, the Associate Director may direct Federal agencies to submit reports relating to their disaster assistance activities. The Associate Director or the Regional Director may request similar reports from the States relating to these activities on the part of State and local governments. Additionally, the Associate Director may conduct independent investigations, studies, and evaluations as necessary to complete the reviews.

§ 205.14 Appeals.

Any appeal is a request for reconsideration of a determination on any action related to Federal assistance

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under the Act and these regulations. Specific procedures for appeals are contained in the relevant subparts of these regulations.

§ 205.15 Effective date.

(a) These regulations are effective and supersede existing regulations as of September 10, 1980.

(b) Any action taken in accordance with previous regulations remains valid.

§ 205.16 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance with Regulation 44 CFR Part 7.

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

(c) As a condition of participation in the distribution of assistance or supplies under the Act or of receiving assistance under the Act, government bodies, and other organizations shall provide a written assurance of their intent to comply with regulations relating to non-discrimination promulgated by the President or the Associate Director and shall comply with such other regulations applicable to activities within an area affected by major disaster or emergency as the Associate Director deems necessary for the effective coordination of relief efforts. The provisions to be included in every Federal-State Agreement shall be the provisions provided by Executive Order 11246 as amended by Executive Orders 11375, 11478 and 12036.

§ 205.17 Coordinating Officers.

(a) Upon the declaration of a major disaster or an emergency the Associate Director will appoint a Federal Coordinating Officer (FCO) who shall:

(1) Make an immediate appraisal of the types of relief aid most urgently needed;

(2) Establish such field offices as he deems necessary;

(3) Coordinate the administration of relief activities of other Federal agencies as well as those of the American National Red Cross, the Salvation Army, the Menonite Disaster Service, and other voluntary relief organizations which agree to operate under his advice or direction;

(4) Coordinate the administration of relief with State and local government officials;

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

(6) Take such other action, consistent with authority delegated to him by the Regional Director and with the provisions of the Act, as he may deem necessary to assist local citizens and public officials in promptly obtaining assistance to which they are entitled.

(b) The Governor shall be requested to appoint a State Coordinating Officer (SCO) in emergencies and major disasters for the purpose of coordinating State and local disaster assistance efforts with those of the Federal Government. The SCO will be the principal point of contact for the FCO regarding coordination of State and local disaster relief activities, implementation of the State Emergency Plan, and State compliance with the Federal-State Agreement. The functions, responsibilities, and authorities of the SCO should be set forth in the State Emergency Plan.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 45 FR 53335, Aug. 11, 1980, 45 FR 64585, Sept. 30, 1980]

§ 205.18 Emergency support teams.

The Associate Director or Regional Director shall form emergency support teams of Federal personnel to be deployed in an area affected by a major disaster or emergency. Such emergency support teams shall assist the Federal Coordinating Officer in carrying out his responsibilities pursuant to the Act and these regulations. Upon request of the Associate Director, the head of any Federal depart-

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ment or agency is authorized to detail to temporary duty with the emergency support teams, on either a reimbursable or non-reimbursable basis as is determined necessary by the Associate Director, such personnel within the administrative jurisdiction of the head of the Federal department or agency as the Associate Director may need or believe to be useful for carrying out the functions of the emergency support teams. Each such detail shall be without loss of seniority, pay, or other employee status.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 45 FR 53335, Aug. 11, 1980; 45 FR 64585, Sept. 30, 1980]

Subpart B—Emergencies**§ 205.23 General.**

Upon the occurrence of a catastrophe within the State which the Governor finds (a) is of such severity and magnitude that effective response is beyond the capability of the State and the affected local governments, and (b) requires emergency assistance to save lives and protect property, health and safety or to avert or lessen the threat of a disaster, which, because of the pressures of time or because of the unique capabilities of a Federal agency, can be more readily provided by the Federal Government; the Governor may present to the President, through the Regional Director, a request for Federal assistance which includes the above findings. Based on such Governor's request, the President may determine that an emergency exists which warrants Federal assistance and may provide such assistance under the Act as he deems appropriate.

§ 205.24 Requests for emergency assistance.

(a) The request for emergency assistance shall be made by the Governor of the affected State to the President, through the Regional Director.

(b) The Governor's request will furnish information describing State and local efforts and resources which have been or will be used to alleviate the emergency including that for which no Federal funding will be requested, and

will define the particular type and specific extent of Federal aid required.

§ 205.25 Processing of State requests.

(a) The Regional Director shall acknowledge the Governor's request. Based on his investigation of the situation, which may include field assessments and consultations with appropriate State and Federal officials or other interested parties, the Regional Director shall promptly submit his report and recommendations to the Associate Director.

(b) The Associate Director shall forward the Governor's request, together with his report and recommendations, to the Director.

(c) The Director shall forward the Governor's request to the President, together with his recommendation regarding Presidential action thereon.

§ 205.26 Initiation of Federal assistance.

Upon a determination by the President that an emergency exists which warrants Federal assistance, the Associate Director shall immediately initiate action to provide Federal assistance under such determination and in accordance with applicable laws, and regulations and the Federal-State Agreement for Emergencies. The Regional Director may approve or undertake emergency work only as authorized under the determination by the President.

§ 205.27 Federal-State agreements.

(a) A Federal-State Agreement for Emergencies (Agreement) shall be executed by the Governor, acting for the State, and the Regional Director, acting for the Federal Government. The Agreement will contain the necessary terms and conditions consistent with the provisions of applicable laws, executive orders, and regulations, as the Associate Director may require and will set forth the type and extent of Federal assistance. The emergency area in which assistance is authorized shall be determined by the Associate Director based on the State's request.

(b) It is intended that continuing agreements shall be executed between each State and the Federal Government as soon as possible. Where con-

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tinuing agreements have been executed, an amendment to such agreement shall be executed by the Governor and the Regional Director for each emergency to specify the incidence period and to include any specifics peculiar to the current emergency. Subsequent amendments to such agreements for the same emergency may be executed by the Governor's Authorized Representative and the Regional Director. A new continuing agreement will be executed if there is a change in Governors or Regional Directors.

(c) The type and extent of Federal assistance set forth in the Agreement, or supplement thereto, shall be the only assistance which is eligible for Federal reimbursement or funding under the Act.

(d) In the event funds are to be transferred to a State for disaster relief purposes, the Agreement, by reference to this section shall contain, and the State and its political subdivisions will agree to, the following provisions:

In the event that a State or local government violates any of the conditions imposed upon disaster relief assistance under law, this Agreement or applicable Federal regulations, the Associate Director will notify the State that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected: *Provided, however,* That if the Associate Director, after such notice to the State, is not satisfied with the corrective measures taken to comply with his notification, the Associate Director will notify the State that further financial assistance will be withheld for the project for which it has been determined that a violation exists, or for all or any portion of financial assistance which has or is to be made available to the State or local governments for the purpose of disaster relief assistance under the provisions of this Agreement, applicable Federal regulations, and the Act.

(e) By reference to this part, the following provision shall be included in the Agreement:

No Member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit to arise thereupon: *Provided, however,* That this provision shall not be construed to extend to any contract made with a corporation for its general benefit.

(f) When assistance is authorized for a local government and a State is unable to assume the responsibilities prescribed in these Regulations and an Indian tribe or authorized tribal organization or Alaska Native village or organization submits a project application in accordance with § 205.7(a), Federal disaster assistance will be administered in accordance with a Federal-Tribal agreement. Such Federal-Tribal agreement will provide that the Indian tribe or authorized tribal organization or Alaska Native village or organization will perform the regulatory or coordinating functions to be performed by a State or its political subdivisions as set forth in this section.

§ 205.28 Emergency mass care.

Emergency mass care, such as emergency medical care, emergency shelter, emergency provision of food, water and medicine, and other essential needs, are normally provided by the Red Cross or other voluntary organizations and Federal emergency assistance will be approved by the Regional Director only upon an affirmative showing that such organizations are not providing all or part of emergency mass care essential needs.

§ 205.33 Time limitations. [Reserved]

Subpart C—[Reserved]

Subpart D—Major Disasters

§ 205.39 General.

Upon the occurrence of a catastrophe within a State which the Governor finds is of such severity and magnitude that effective response is beyond the capability of the State and the affected local governments and that Federal assistance is necessary to supplement the efforts and available resources of the State, local governments and disaster relief, organizations, the Governor may present to the President, through the Regional Director a request for Federal assistance which includes the above findings. Based on such Governor's request, the President may declare that a major disaster exists. Federal assistance pursuant to such declaration may

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include emergency assistance pursuant to Subpart B of this part. Where the situation is not of sufficient severity and magnitude to warrant major disaster assistance under the Act, or where information upon which to base such a declaration is insufficient or not readily available, the President may determine that an emergency exists which warrants Federal assistance.

§ 205.40 Definitions.

As used in this part:

(a) "Field Assessment" means those preliminary estimates and descriptions, based on actual observations by government engineers or inspectors, of the nature and extent of damages, resulting from a disaster, and of the Federal assistance potentially eligible under the Act.

(b) "Disaster-affected areas" means any local government, as defined in § 205.2 or part thereof, designated by the Associate Director, upon request by the State, as being eligible for Federal assistance under the Act.

(c) "Applicable standards of safety, decency, and sanitation" are those minimum guidelines prescribed or approved by the Associate Director for any repair or reconstruction financed by Federal grants or loans under the Act.

§ 205.41 Requests for major disaster assistance.

(a) The request for a major disaster declaration shall be made by the Governor of the affected State to the President, through the Regional Director.

(b) As a part of such request, and as a prerequisite to major disaster assistance under the Act, the Governor shall take appropriate action under State law and direct execution of the State's emergency plan, and shall advise the Associate Director thereof. In addition, the request shall include the following:

(1) An estimate of the amount and severity of damage broken down by type, such as private non-agricultural, agricultural, and public.

(2) A statement of actions pending or taken by the State or local legislative and governing authorities with regard to the disaster.

(3) A certification that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will constitute the expenditure of a reasonable amount of the funds of such State and local governments for alleviating the damage, loss, hardship, or suffering resulting from such disaster. The certification by the Governor shall include the following:

Pursuant to Federal Disaster Assistance Administration Regulations, I certify that the total of expenditures and obligations for this disaster for which no Federal reimbursement will be requested are expected to exceed \$_____ in accordance with the following table:

[In dollars]

Category of assistance	Amount ¹	
	State	Local
Individual assistance:		
Housing.....		
Individual and family grants.....		
Mass care.....		
Other (specify).....		
Total.....		
Public assistance:		
Debris and wreckage clearance.....		
Protective work.....		
Restoration of public facilities.....		
Public safety.....		
Other (specify).....		
Total.....		
Grand total.....		

¹Provide separately for each disaster affected area requested.

(4) An estimate of the extent and nature of Federal assistance needed within the State, broken down by category of public or individual assistance for each disaster affected area for which Federal assistance is requested and the estimated Federal funds required for each category.

(5) As appropriate, other justification in support of the request.

§ 205.42 Processing the request of a Governor for a declaration of a "major disaster".

(a) The Regional Director shall acknowledge the Governor's request. Based on his investigation of the situation, which may include field assess-

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ments of the affected area and consultations with appropriate State and Federal officials, or other interested parties, the Regional Director shall promptly submit his report and recommendations to the Associate Director.

(b) The Associate Director shall forward the Governor's request, together with his report and recommendations, to the Director.

(c) The Director shall forward the Governor's request to the President, together with his recommendation regarding Presidential action thereon.

§ 205.43 Initiation of Federal assistance.

Upon a declaration of a major disaster by the President, the Associate Director shall immediately initiate action to provide Federal assistance in accordance with such declaration, applicable laws, regulations, and the Federal-State Agreement for Major Disasters. Disaster affected areas within the State will be determined by the Associate Director based on the State's request. A disaster affected area designated by the Associate Director includes all local governments within its boundaries.

§ 205.44 Federal-State agreement.

(a) Upon the declaration of a major disaster, a Federal-State Agreement for Major Disasters (Agreement) will be executed by the Governor, acting for the State; and the Regional Director, acting for the Federal Government. Such Agreement shall provide for the manner in which Federal assistance is to be made available and contain the assurance of the Governor that a reasonable amount of the funds of the State, local governments, or other agencies therein will be expended in alleviating damage caused by the disaster. The Agreement will also contain such other terms and conditions consistent with the provisions of applicable laws, executive orders, and regulations as the Associate Director may require.

(b) The Agreement will specify the assistance to be provided as a result of major disaster.

(c) In the event funds are to be transferred to a State for disaster relief purposes, the Agreement, by reference to this section shall contain,

and the State and its political subdivisions will agree to, the following provisions:

In the event that a State or local government violates any of the conditions imposed upon disaster relief assistance under law, this Agreement or applicable Federal regulations, the Associate Director will notify the State that additional financial assistance for the purpose of the project in connection with which the violation occurred will be withheld until such violation has been corrected: *Provided, however,* That if the Associate Director, after such notice to the State, is not satisfied with the corrective measures taken to comply with his notification, the Associate Director will notify the State that further financial assistance will be withheld for the project for which it has been determined that a violation exists, or for all or any portion of financial assistance which has or is to be made available to the State or local governments for the purpose of disaster relief assistance under the provisions of this Agreement, applicable Federal regulations, and the Act.

(d) By reference to this part, the following provision shall be included in the Agreement:

No Member of or Delegate to Congress or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit to arise thereupon: *Provided, however,* That this provision shall not be construed to extend to any contract made with a corporation for its general benefit.

(e) When assistance is authorized for a local government and a State is unable to assume the responsibilities prescribed in these Regulations and an Indian tribe or authorized tribal organization or Alaska Native village or organization submits a project application in accordance with § 205.7(a), Federal disaster assistance will be administered in accordance with a Federal-Tribal agreement. Such Federal-Tribal agreement will provide that the Indian tribe or authorized tribal organization or Alaska Native village or organization will perform the regulatory or coordinating functions to be performed by a State or its political subdivisions as set forth in this section.

§ 205.45 Temporary housing assistance.

(a) *Purpose.* The purpose of this section is to prescribe the policy, standards, and procedures to be followed in implementing the temporary housing

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assistance program authorized by Section 404 of the Act.

(b) *General program policies.* Assistance under this program is made available to eligible individuals and families who require temporary housing as a result of a major disaster. The commencement date and the term of temporary housing assistance is that set forth in paragraph (k)(1) of this section. No rental shall be established for the first twelve months of occupancy in temporary housing. An eligible applicant is expected to accept the first reasonable offer of temporary housing; refusal to do so may result in forfeiture of temporary housing assistance. Temporary housing will not be provided to an individual or family for use as a vacation or recreational dwelling. Temporary housing will not be made available to individuals or families who are displaced as a consequence of a redevelopment program undertaken by a community.

(c) *Application period.* Applications for temporary housing will be accepted up to and including sixty (60) days following the date of the declaration of a major disaster, except when additional time for submission of applications is authorized by the Associate Director or his/her designee for reasons including:

(1) Uniformity of application periods in contiguous States declared disaster areas as the result of the same or a similar incident;

(2) Extenuating circumstances including, but not limited to, hospitalization, illness, or inaccessibility which prevent an applicant from applying in a timely manner.

(d) *General eligibility guidelines.* (1) Temporary housing assistance may be made available to those disaster victims who, as a result of a major disaster, require temporary housing because:

(i) Their dwelling has been destroyed as a result of a major disaster;

(ii) Their dwelling has been damaged or utility service has been interrupted to such an extent as to constitute a health or safety hazard which did not exist prior to the disaster;

(iii) Their dwelling has been made inaccessible due to the disruption or destruction of transportation routes or

facilities, or due to other impediments to access;

(iv) Their dwelling has been made inaccessible by restrictions on travel or movement imposed or recommended by a responsible official;

(v) Their dwelling is no longer available due to eviction or dispossession of the applicant by the owner because of the owner's personal need for that dwelling as a result of a major disaster;

(vi) They have been evicted from their dwelling by the owner or mortgage holder because of their financial hardship which is a direct result of the disaster; or

(vii) The Associate Director or his/her designee determines that other circumstances resulting from a major disaster prevent an individual or family from occupying a dwelling which they occupied immediately prior to the major disaster.

(2) *Provision of temporary housing to eligible applicants.* Applications for temporary housing assistance shall be processed in the order in which they are filed, except that extreme hardship situations shall be recognized and such applications processed on a priority basis. Temporary housing shall be provided to meet the particular needs of eligible individuals and families.

(e) *Temporary housing resources.* The form of temporary housing provided should not exceed that which meets the eligible individual's or family's minimum temporary housing requirement.

(1) Housing units owned by the Veterans Administration, Farmers Home Administration, Department of Housing and Urban Development, or other Federal Agencies may be made available for use as temporary housing.

(2) Private or commercial rental properties whose owners/managers agree to make units available may be used as temporary housing. Such private rentals may include second homes or resort properties not normally available on the private market, and privately owned mobile homes ready for occupancy on existing sites. Owners/agents may be paid fair market rent for the type and size of the units made available.

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(3) Mobile homes, travel trailers, or other readily fabricated dwellings owned or leased by the Government may be used as temporary housing when other resources are unavailable or insufficient.

(4) Motel, hotel or other similar transient accommodations may be provided to eligible temporary housing applicants pending the availability of other temporary housing, or when the duration of the applicant's temporary housing requirement warrants placement in short-term accommodations. Transient accommodations may be provided for a period of thirty days unless this period is extended by the Associate Director or his/her designee. The Federal responsibility for transient accommodations shall be limited to the rental cost of such temporary housing, exclusive of food, telephone, or other similar services.

(f) *Use of mobile homes, travel trailers, and other readily fabricated dwellings.* Mobile homes, travel trailers, and other readily fabricated dwellings may be placed on private, group or commercial sites under the following conditions:

(1) *Private sites.* A mobile home, travel trailer, or other readily fabricated dwelling may be placed on a private site, which is a site provided or obtained by the temporary housing applicant at no cost to the Federal Government, if such site can satisfactorily accommodate the mobile home, travel trailer, or other readily fabricated dwelling provided as temporary housing. The Associate Director has determined that the installation or repair of essential utilities on private sites is in the public interest, and the cost of such installation and connection of necessary utilities to service the mobile home, travel trailer, or readily fabricated dwelling on such a site is authorized at Federal expense.

(2) *Group sites.* Mobile homes, travel trailers, or other readily fabricated dwellings may be located on group sites, which are sites provided or obtained by a State or local government or other organization completely developed with all essential utilities at no cost to the Federal Government, except that the Associate Director may authorize installation of essential

utilities at Federal expense or elect to develop group sites at Federal expense when he/she determines such action to be in the public interest. Connection costs are authorized at Federal expense.

(3) *Commercial sites.* A Mobile homes, travel trailers, or other readily fabricated dwellings may be placed on commercial sites, which are sites customarily leased for a fee, at no cost to the Federal Government, except that such sites may be leased at Federal expense when the Associate Director or his/her designee determines that such lease is in the public interest. Connection costs may be authorized at Federal expense. When the Associate Director determines that upgrading of a commercial site or installation of utilities on such a site is in the public interest, he/she may authorize such action at Federal expense.

(g) *Utility use costs.* Utility use costs for all forms of temporary housing other than transient accommodations shall be the responsibility of the occupant, unless the Associate Director waives this requirement when such action is in the public interest. In those cases where the Federal Government becomes the guarantor for utility services not metered separately, or where the utility costs are included in rental costs, each recipient will be assessed a monthly amount equivalent to the pro rata cost of utilities services.

(h) *Minimal repair program.* In lieu of providing other types of temporary housing except transient accommodations, minimal repairs may be authorized to repair or restore that portion of an owner-occupied dwelling which will allow the owner and his/her family to reoccupy the dwelling quickly. Installation of utilities or conveniences not available to the owner-occupant in that dwelling prior to the disaster shall not be provided under the Minimal Repair Program, but those repairs which are undertaken shall conform to local or State building codes.

(1) *Feasibility.* The Minimal Repair Program may be offered to those temporary housing applicants:

(i) Who have been determined eligible for temporary housing;

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(ii) Who are owner/occupants of the dwelling unit to be repaired;

(iii) Who elect this form of temporary housing, when offered, in lieu of other alternatives which may include rental accommodations, mobile homes, and other available forms of housing;

(iv) Whose property can be repaired within thirty days following the repair authorization, unless the Associate Director or his/her designee extends this period throughout the designated disaster area because of local conditions;

(v) Who agree to reimburse the government for the cost of the repairs of items replaced if they receive compensation for such repairs or items from the proceeds of any insurance settlement; and

(vi) Whose property can be repaired within the following cost limitation: The cost of repairs shall not exceed the average fair market rental cost to house a family of similar size and composition in the area for a period of 12 months, unless waived by the Associate Director when he/she determines that such waiver is in the best interest of the Federal Government.

(2) *Minimal repair program options.*

(i) Applicants subsequently approved for the Minimal Repair Program under paragraph (h)(1) of this section who elected to perform their own repairs prior to election of the Minimal Repair Program, either by themselves or by contract, may be reimbursed for materials and contract labor for such repairs and for replacement items authorized in paragraph (h)(3) of this section.

(ii) Applicants approved for the Minimal Repair Program under paragraph (h)(1) of this section who elect to perform their own repairs, or are able to utilize the free labor of individual volunteers or volunteer agencies, may be provided with materials and replacement items authorized in paragraph (h)(3) of this section.

(3) *Scope of work.* The type of repair or replacement authorized may vary depending on the nature of the disaster, but will generally include the following: *Provided,* The items listed were a part of the dwelling prior to the disaster, unless the Associate Director waives this proviso when he/she determines that such waiver is in the

best interest of the Federal Government:

(i) Plumbing system including kitchen sink, lavatory, water closet, bath tub or shower, septic tank, well, and the utility services carrying water, sewer, and gas;

(ii) Electrical system including wiring, weather head, panel box, overhead lights, switches, and receptacles; and

(iii) Heating system including furnace, controls, space heater, ducts, and venting (if permanent repair cannot be accomplished before the season requiring heat);

(iv) Water heater and venting;

(v) Elimination of health and safety hazards existing to wells, floors, stairs, porches, walls, ceilings, and chimneys;

(vi) Doors and windows, including screens;

(vii) Minor repairs to foundations, footings, piers, sills, and exterior walls;

(viii) Minor repairs to stove and refrigerator;

(ix) Temporary or weather proofing repairs to roofs; and

(x) Mud and debris removal from the dwelling unit, if required.

(i) *Furniture Items—(1) Eligibility.* Furniture may be provided to eligible applicants for temporary housing if the individual or family is being placed in an unfurnished housing unit, or has located a suitable unfurnished housing unit, or has elected the Minimal Repair Program, and requires furniture to occupy such temporary housing.

(2) *Items Authorized.* Furniture may be leased, purchased or obtained from Federal stocks and will be of simple construction and functional quality and may include the following, adjusted according to family size and composition:

(i) Kitchen furniture to include table and chairs, stove and refrigerator;

(ii) Bedroom furniture to include bed (frame, mattress, spring), night table and lamp or floor lamp, dresser or chest; and

(iii) Living room furniture, including one sofa, one floor lamp, one living room chair, two end tables, and one coffee table.

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(3) Disposition of Furniture Items.

(i) Furniture made available to temporary housing occupants will be disposed of when temporary housing is no longer required, as determined through the recertification process prescribed in paragraph (k)(2) of this section.

(ii) Furniture will be disposed of in one of the following manners:

(A) Return to the lessor;

(B) If the furniture has been purchased under authority of these regulations, it is the property of the Federal Government and may be:

(1) Sold to the occupant at a fair and equitable price based on the fair market value of the furniture and adjusted to take into consideration the reasonable ability of the purchaser to pay; or

(2) Disposed of in accordance with Federal property management procedures at 41 CFR 101-45.5, Abandonment or Destruction of Surplus Property.

(j) *Household items*—(1) *Eligibility.* Household items may be provided to those determined eligible for temporary housing if they are being placed in a temporary housing unit not already supplied with such items, or have located a suitable housing unit and require household items to occupy the unit, or have elected the Minimal Repair Program, and require household items to occupy the unit. Household items provided under this section are expendable.

(2) *Items Authorized.* Household items provided to occupants of temporary housing shall be of simple, functional quality and may include the following, adjusted according to family size and requirements:

- (i) Sheets (2 per bed);
- (ii) Pillows (1 per person);
- (iii) Pillowcases (1 per person);
- (iv) Blankets (1 per bed);
- (v) Bath towels (2 per person);
- (vi) Hand towels (2 per person);
- (vii) Wash cloths (1 per person);
- (viii) Dish Cloths (2 per family);
- (ix) Dish towels (4 per family);
- (x) Dishes (service for 4);
- (xi) Flatware (service for 4);
- (xii) Glasses (service for 4);
- (xiii) Non-electric coffee pot (1 per family);

(xiv) Saucepans (2 per family);

(xv) Skillets (1 large, 1 small per family);

(xvi) Baking and cooking utensils, one each of the following:

(A) Baking pan;

(B) Baking sheet;

(C) Mechanical can opener;

(D) Kitchen fork;

(E) Kitchen knife;

(F) Paring knife;

(G) Spatula;

(H) Serving spoon;

(xvii) Mop (one);

(xviii) Bucket (one);

(xix) Broom (one); and

(xx) Dustpan (one).

(k) *Period of Assistance*—(1) *Commencement.* Temporary housing may be provided as of the date of the occurrence of the major disaster or emergency as specified in the FR Notice. The assistance period shall commence either with the date the eligible applicant obtained his own temporary housing under this program, or with the date the eligible applicant is provided with temporary housing.

(2) *Recertification.* Recertification is a periodic review of the status of each temporary housing occupant to determine eligibility for continued occupancy in temporary housing. The recertification process results in a notification to the occupant of his/her eligibility or ineligibility for continued assistance. The period of eligibility for continued occupancy in temporary housing shall be determined on the basis of need. Each occupant's eligibility for continued assistance shall be recertified no less frequently than every 90 days.

(3) *Criteria for Continued Eligibility.* A temporary housing occupant shall endeavor to place himself/herself in alternate housing at the earliest possible time. A temporary housing occupant shall be eligible for continued assistance when:

(i) Alternate housing is not available to the occupant. Alternate housing is deemed available when it:

(A) Is sufficient in size to accommodate the family;

(B) Is free of health and safety hazards;

(C) Is located such that the occupants may commute to their places(s)

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of employment, schools, and other centers of family activity within usual and customary commutation time periods effective in the area;

(D) Is within the financial means of the occupant, based on 25 percent of adjusted household income. Occupants who qualify for available low-income or other government rent subsidies shall be considered able to assume financial responsibility for similar alternate housing. For the purpose of this subparagraph, housing costs shall include utilities costs, and adjusted household income shall be computed using the total gross income of household members (excluding the earnings of persons under 18, except where such persons are head of the household or a spouse), with the following exceptions:

(1) \$25 per month for each person under 18 or full-time student over 18 except when such an individual is a head of household;

(2) \$25 per month for each elderly (over 62) or handicapped adult, except where they are head of the household; and

(3) Expenses resulting from unusual financial demands upon a household, as approved by the Associate Director or his/her designee.

(E) Does not impose an undue burden upon the occupant in his/her plans to secure permanent housing.

(ii) The occupant is in compliance with the terms of the rental contract/agreement including:

(A) Prompt payment of utility, rent, and other appropriate charges;

(B) Reimbursement to the Government where all or a portion of the temporary housing assistance represents a duplication of benefits or for other charges as authorized by the Associate Director or his/her designee;

(C) Maintenance of the temporary housing unit in a manner normally expected of a tenant; and

(D) Utilization of the unit for purposes of a family dwelling, solely for the occupant's household.

(4) *Rental Policy.* No rental shall be established for the first twelve months of occupancy in temporary housing. Such twelve months shall include occupancy in transient accommodations. Thereafter, provided alternate hous-

ing resources are unavailable, rentals shall be established based on the fair market rent as established by the appropriate official of the Federal Emergency Management Agency (excluding utilities costs) for each type and size of temporary accommodation being furnished. Such rentals shall be adjusted to take into consideration the financial ability of the household as described in paragraph (k)(3)(i)(A) of this section. Based on a recertification review, occupants will be notified of the date and amount of the first rental payment 30 days before the expiration of the first twelve months of occupancy.

(5) *Termination of Assistance.* (i) Temporary housing assistance may be terminated on a 30-day written notice after which 30 days the occupant may be liable for such additional charges as are deemed appropriate by the Associate Director his/her designee. Temporary housing assistance may be terminated for reasons including, but not limited to, the following:

(A) A determination has been made through the recertification process that alternate housing is available to the occupant, as described in paragraph (k)(3)(i) of this section.

(B) Failure on the part of the occupant to utilize or maintain the temporary housing provided in the manner normally expected of a tenant. Normal wear and tear excepted, the occupant shall be liable for all damages to the property.

(C) Failure on the part of the occupant to pay established rent, utilities, or other appropriate charges.

(D) Determination that the temporary housing assistance was obtained either through misrepresentation or fraud.

(ii) Termination of temporary housing may be in the form of eviction from temporary housing or termination of financial assistance. Any appeals by the occupant from a termination notice shall be processed and resolved pursuant to the temporary housing pretermination procedure (24 CFR Part 470).

(1) *Insured Individuals and Families—(1) Provision of Temporary Housing Accommodations.* In order to avoid duplication of benefits, insured indi-

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viduals and families may be provided temporary housing assistance when:

- (i) There is uncertainty as to whether insurance benefits will be paid;
- (ii) Payment of insurance benefits may be significantly delayed;
- (iii) Insurance benefits have been exhausted;
- (iv) Insurance benefits are inadequate to provide the full cost of housing on the private market; or
- (v) Housing is not available on the private market.

The insured individual or family shall agree to repay the government from any insurance proceeds they receive in an amount equivalent to the fair market value of assistance provided or that portion of insurance proceeds received for such housing, whichever is less. Minimal Repair Program recipients shall repay the government the cost of any repairs or replacement completed under the Minimal Repair Program which are covered by insurance, or the amount received from insurance proceeds for the damaged item repaired under this program, whichever is less.

(2) *Exhaustion of Insurance Benefits.* (i) Applicants who are determined eligible for temporary housing and who have received benefits may be provided temporary housing upon presentation of proof that insurance has been exhausted and temporary housing remains a need. These applicants shall be eligible for rent free temporary housing assistance not to exceed twelve months following exhaustion of insurance benefits if the criteria for continued assistance, paragraph (k)(3) of this section, are met.

(ii) For applicants determined eligible for temporary housing and who received partial insurance benefits, the period of temporary housing assistance shall commence with the first month of partial assistance.

(m) *Disposition of Temporary Housing Units*—(1) *Sale.* The Associate Director or his/her designee may sell any temporary housing unit acquired by purchase directly to occupants of temporary housing for their use as permanent housing. Such sales shall be at prices that are fair and equitable, adjusted to take into consideration the reasonable ability of the pur-

chaser to pay. Such sales shall be made subject to the following conditions:

- (i) The unit is to be used as a primary residence;
- (ii) The unit is adequate for family size and composition;
- (iii) The purchaser has sufficient resources to purchase and relocate the unit; and
- (iv) The purchaser has a suitable site for placement of the unit. (A suitable site shall be defined as one that complies with local codes and standards).

The purchaser must be informed that he/she may have to bring the unit up to applicable codes and standards.

(2) *Transfer.* The Associate Director may sell, lease, or donate temporary housing units purchased under Section 404(a) of the Act Directly to States, other governmental entities, or voluntary organizations. As a condition of such transfer, the Associate Director shall require that the recipient:

- (i) Comply with the provision of § 205.13 of the regulations requiring non-discrimination in the distribution and occupancy of temporary housing; and
- (ii) Utilize the units provided for the initial purpose of providing temporary housing for victims of major disasters or emergencies.

The Associate Director may order returned any temporary housing unit made available under this section which is not used in accordance with the terms of transfer cited above.

(n) *Mortgage and Rental Payments.* Temporary assistance in the form of mortgage or rental payments may be paid to or provided on behalf of applicants who, as a result of major disaster, have received written notice of dis-possession or eviction from dwelling by foreclosure of any mortgage or lien, cancellation of any contract of sale, or termination of any lease entered into prior to the disaster. Written notice, for the purpose of this paragraph, means a communication in writing by a landlord, mortgage holder, or other party authorized under State law to file such notice, the purpose of which is to notify an occupant of impending termination of a lease, foreclosure of a mortgage or lien, or cancellation of

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any contract of sale, which would result in the occupant's dispossession or eviction from his dwelling. Applications for this type of assistance may be filed up to one year following the date of declaration of the major disaster. This assistance may be provided for a period not to exceed one year or for the duration of the period of financial hardship, whichever is less. The location of the dwelling of an applicant for assistance under this section shall not be a condition of eligibility.

(o) *Appeals*—(1) *Eligibility Determination*. An applicant declared ineligible for temporary housing and whose application is not scheduled for reactivation at a later date, or an applicant whose application has been canceled for cause, shall have the right to appeal such a determination within 15 calendar days following notification of such action. The Associate Director or his/her designee shall consider the appeal within two weeks after receipt of the appeal. The applicant shall receive written notice of the disposition of the appeal. The decision of the Associate Director or his/her designee is final.

(2) *Termination*. An occupant who has been notified of his/her termination from temporary housing as described in paragraph (k)(5) of this section shall have the right to appeal the decision within five (5) business days after receipt of such notice. Such appeals shall be made and resolved in accordance with pretermination procedures contained in Federal regulations (24 CFR Part 470).

(p) *Receipts*. All monies received from rental charges, insurance proceeds, deposit refunds, proceeds of sale of temporary housing units or furniture, and other receipts as appropriate, shall be deposited as general receipts in the U.S. Treasury under established procedures.

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

(r) *Federal Responsibility*. The Federal responsibility for the operation of a temporary housing program shall

not exceed eighteen months from the date of the declaration of the major disaster by the President, unless this period is extended by the Associate Director based on his/her determination that such extension is in the public interest. The Associate Director may provide government property or other resources to a State, other governmental entity, or voluntary organization for the management and operation of a temporary housing program.

(Sec. 404, Pub. L. 93-288, 88 Stat. 154 (42 U.S.C. 5174); Executive Order 11795, as amended by E.O. 11910, 39 FR 25939; Delegation of Authority, 39 FR 28227)

[43 FR 8765, Mar. 2, 1978. Redesignated at 44 FR 62517, Sept. 28, 1979]

§ 205.46 Disaster legal services.

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

(b) Disaster legal services shall be provided free to such individuals. Fee-generating cases shall not be accepted by lawyers operating under these regulations. For purposes of this section, a fee-generating case is one which would not ordinarily be rejected by local lawyers as a result of its lack of potential remunerative value. Where any question arises as to whether a case is fee-generating as defined in this section, the Regional Director or his/her representative, after any necessary consultation with local or State bar associations, shall make the determination. Any fee-generating cases shall be referred by the Regional Director or his/her representative to private lawyers, through existing lawyer referral services, or, where that is im-

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practical or impossible, the Regional Director may provide a list of lawyers from which the disaster victim may choose. Lawyers who have rendered voluntary legal assistance under these regulations are not precluded from taking fee-generating cases referred to them in this manner while in their capacity as private lawyers.

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

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

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

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

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

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

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

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

(f) Any disaster legal services shall be provided in accordance with § 205.13, Non-discrimination in disaster assistance, of these regulations.

(Sec. 412, Pub. L. 93-288, 88 Stat. 157 (42 U.S.C. 5182); Sec. 601, Pub. L. 93-288 (42 U.S.C. 5201); Executive Order 11795 as amended by E.O. 11910 at 41 FR 15681; Delegation of Authority, 41 FR 19365; amended by 43 FR 3627)

[43 FR 19230, May 4, 1978. Redesignated at 44 FR 56172, Sept. 28, 1979 and corrected at 44 FR 62517, Oct. 31, 1979]

§ 205.47 Disaster unemployment assistance.

The Secretary of Labor, consistent with the delegation of authority to him by the Secretary of the United States Department of Housing and Urban Development dated Aug. 13, 1974 (39 FR 33020), will (a) provide assistance to individuals unemployed as a result of a major disaster, and (b) provide reemployment assistance services under section 407 of the Act and under other laws administered by the Department of Labor to individuals who are unemployed as a result of a major disaster and (c) issue such rules and regulations as may be necessary and appropriate. Such regulations will be issued in 20 CFR Ch. V, Part 625 (34 FR 19656, December 13, 1969), as amended.

[40 FR 23253, May 28, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979]

§ 205.49 Food commodities.

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

(b) In carrying out his responsibilities in paragraph (a) of this section, the Associate Director may direct the Secretary of Agriculture to purchase food commodities in accordance with authorities prescribed in section 410(b) of the Act.

§ 205.50 Relocation assistance.

Notwithstanding any other provision of law, no person otherwise eligible for

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any kind of replacement housing payment under the "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970" (Pub. L. 91-646) shall be denied such eligibility as a result of his being unable, because of a major disaster as determined by the President, to meet the occupancy requirements set by such Act.

§ 205.51 Crisis counseling assistance and training.

The Secretary of Health, Education, and Welfare, consistent with the Delegation of Authority to him by the Secretary of the United States Department of Housing and Urban Development (Docket No. 75-309, 40 FR 10705, dated March 7, 1975) will, subject to the general policy guidance and coordination of the Associate Director, (a) provide professional counseling services to victims of major disasters in order to relieve mental health problems caused or aggravated by such major disaster or its aftermath; (b) provide financial assistance to State or local agencies or private mental health organizations to provide such services or training of disaster workers; and (c) issue such rules and regulations as may be necessary and appropriate to effectuate this delegation.

[40 FR 23253, May 28, 1975; 40 FR 28609, July 8, 1975. Redesignated at 44 FR 56172, Sept. 28, 1979; 44 FR 62517, Oct. 31, 1979]

§ 205.54 Individual and family grant (IFG) programs.

(a) *General.* The Governor may request that a Federal grant be made to a State for the purpose of such State making grants to individuals or families who, as a result of a major disaster, are unable to meet disaster-related necessary expenses or serious needs. The total Federal grant under this section will be equal to 75 percent of the actual cost of meeting necessary expenses or serious needs of individuals and families, plus State administrative expenses not to exceed 3 percent of the Federal grant (see computation of State administrative expenses in paragraph (f)(1) of this section). The total Federal grant is made only on condition that the remaining 25 percent of the actual cost of meeting individuals' or families' necessary expenses or seri-

ous needs is paid from funds made available by the State. With respect to any one major disaster, an individual or family may not receive a grant or grants under this section totaling more than \$5,000, including both the Federal and State shares. The Governor or his/her designee is responsible for the administration of the grant program.

(b) *Purpose.* The grant program is intended to provide funds to individuals or families to permit them to meet those disaster-related necessary expenses or serious needs for which assistance from other means is either unavailable or inadequate. Meeting those expenses and needs as expeditiously as possible will require States to make an early commitment of personnel and resources. States may make grants for emergency needs in instances where there is an unreasonable delay in receiving assistance from other means, with a commitment from the applicant that when assistance is received from other means the State must be reimbursed. The grant program is not intended to indemnify disaster losses or to permit purchase of items or services which may generally be characterized as nonessential, luxury, or decorative.

(c) *Definitions used in this section.*

(1) "Necessary expense" means the cost of an item of service essential to an individual or family to prevent, mitigate or overcome a disaster-related hardship, injury, or adverse condition.

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

(3) "Family" means a social unit living together and comprised of a husband and wife and dependents, if any, or a household comprised of an unmarried person living with a dependent son, stepson, daughter, stepdaughter, or a dependent descendant of a son or daughter.

(4) "Individual" means a person who is not a member of a family, as defined in paragraph (c)(3) of this section.

(5) "Assistance from other means" means assistance, including monetary or in-kind contributions, from other

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governmental programs, insurance, voluntary or charitable organizations, or from any sources other than those of the individual or family.

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

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

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

(A) Make application to all applicable available governmental disaster assistance programs for assistance to meet a necessary expense or serious need (see exception in paragraph (d)(1)(iii) of this section), and be determined not qualified for such assistance, or demonstrate that the assistance received does not satisfy the total necessary expense or serious need;

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

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

(ii) Individuals or families who incur a necessary expense or serious need in the major disaster area may be eligible for assistance under this section without regard to their alienage, their residency in the major disaster area, or their residency within the State in which the major disaster has been declared.

(iii) Individuals or families are ineligible for disaster loan assistance from the Small Business Administration (SBA), and need not apply for such assistance, if they certify that they:

(A) Suffered only personal property damage; and

(B) Are unemployed; and

(C) Derive more than 50 percent of their income from welfare or social security payments.

(iv) The flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition and construction purposes. Subpart K of Part 205 implements Pub. L. 93-234 for FEMA assistance generally. This paragraph refines those requirements for the IFG program. To the extent that this paragraph is inconsistent with Subpart K, this paragraph applies.

(A) For the purposes of this paragraph, "financial assistance for acquisition or construction purposes" means a grant to an individual or family to repair, replace, or rebuild a home, and/or to purchase or repair insurable contents. However, the term does not include grants related to non-flood damage.

(B) A State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard area which has been identified by the Director for at least one year as flood-prone, unless the community in which the structure is located is participating in the National Flood Insurance Program (NFIP). However, if a community qualifies for and enters the NFIP during the six-month period described in 44 CFR 205.253(a)(3)(1), the Governor's Authorized Representative (GAR) may request a time extension (see paragraphs (k)(1)(ii) and (iii) of this section) from the Regional Director for the purpose of accepting and processing grant applications in that community. The Regional Director or Associate Director, as appropriate (see paragraph (k)(2) of this section), may approve the State's request if those applicable governmental disaster assistance programs which were available during the original application period are available to the grant applicants during the extended application period.

(C)(1) The State may not make a grant for acquisition or construction purposes where the structure to which the grant assistance relates is located in a designated special flood hazard

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area in which the sale of flood insurance is available under the NFIP unless the individual or family agrees to purchase adequate flood insurance and to maintain such insurance for the life of the structure or for as long as the individual or family occupies the residence whichever is less. Adequate flood insurance, for purposes of the IFG program means (i) for an owner-occupant, a policy providing coverage of at least \$5,000 for the structure and \$2,000 for contents; (ii) for a renter, a policy providing coverage of at least \$5,000 for contents. If the grant recipient fails to obtain the required flood insurance he/she must return to the State the amount of the grant received for acquisition and construction and the amount received for the first year's premium. If the grant recipient fails to maintain the required insurance he/she will receive grant assistance only for flood damage to insurable items which exceeds the face value of the flood insurance policy had the policy been maintained. If the grant recipient can show proof that the settlement would have been less than the face value of the flood insurance policy, the State may approve the increased amount. The cost of the first year's premium is considered a necessary expense for those individuals or families who are required to obtain flood insurance (see paragraph (d)(2)(vi) of this section). If the same premium will provide more than the required coverage, the higher coverage should be obtained.

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

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

(v) In order to comply with the President's Executive Orders on Floodplain Management (EO 11988)

and Protection of Wetlands (EO 11990), the State must implement the IFG program in accordance with FEMA regulations 44 CFR Part 9. That part specifies which IFG program actions require a floodplain management decision-making process before a grant may be made, and also specifies the steps to follow in the decision-making process. Should the State determine that an individual or family is otherwise eligible for grant assistance, the State shall accomplish the necessary steps in accordance with that section, and request the Regional Director to make a final floodplain management determination.

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

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

(A) Repair, replace, or rebuild;

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

(C) Clean or make sanitary;

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

(E) Provide or take minimum protective measures required to protect such residences against the immediate threat of damage.

(ii) *Personal property such as:*

(A) Clothing;

(B) Household items, furnishings, or appliances. If a pre-disaster renter receives a grant for household items, furnishings, or appliances, and these

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items are an integral part of a mobile home or other furnished unit, the pre-disaster renter may apply the funds awarded for these specific items toward the purchase of the furnished unit, and toward mobile home site development, towing, set-up connecting and/or reconnecting:

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

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

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

(iii) Transportation. Grants may be authorized to provide public transportation. When public transportation is unavailable or inadequate, grants for private transportation may be provided.

(iv) Medical or dental expenses.

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

(vi) Cost of the first year's flood insurance premium to meet the requirements of paragraph (d)(1)(iv)(C) of this section.

(vii) Minimization measures required by owner-occupants to: Comply with the provisions of 44 CFR Part 9 (Floodplain Management and Protection of Wetlands); enable them to receive assistance from other means; and enable them to comply with a community's floodplain management regulations.

(viii) Cost for estimates required for eligibility determinations under the IFG program. A grant in this category may not exceed the customary charges for such services in the disaster area.

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

for grant assistance. Following such a determination, the Associate Director shall advise the State, through the Regional Director, and provide the necessary program guidance.

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

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

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

(iii) Landscaping;

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

(v) Financial obligations incurred prior to the disaster.

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

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

(ii) Procedures for:

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

(B) Accepting applications at Disaster Assistance Centers and subsequently at State established local application centers;

(C) Establishing local application centers after the closing of Disaster Assistance Centers;

(D) Verifying necessary expenses and serious needs;

(E) Determining applicant eligibility and grant amounts by a State employee or panel of State employees, and notifying applicants of the State's decision;

(F) Determining the requirement for flood insurance;

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

(H) At the applicant's request, reconsidering the State's determinations;

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

(1) The receipt of oral or written evidence from the appellant or representative,

(2) A determination on the record, and

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

(J) Disbursing grants in a timely manner;

(K) Verifying by random sample (no less than a 5% sample) that grant funds are meeting applicants' needs; are not duplicating assistance from other means; and are meeting flood-plain management and flood insurance requirements.

(L) Recovering grant funds obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, not expended or committed as of the date the State requests Federal reimbursement, or authorized for acquisition or construction purposes where proof of purchase of flood insurance is not provided to the State;

(M) Conducting a State audit;

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

(O) Reviewing and updating the plan.

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

(iv) Provisions for compliance with Section 311 of the Act, Non-discrimination in Disaster Assistance, and Section 317 of the Act, Criminal and Civil Penalties.

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

(vi) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program, and provisions for ensuring the immediate return, upon discovery, of all advances made by the Federal Government that are excess to the program needs.

(2) The Governor or his/her designee may request the Regional Director to provide technical assistance in the

preparation of an administrative plan to implement this program.

(3) The Regional Director shall review the State administrative plan in each disaster for which assistance under this section is requested, and may defer approval until the plan meets the requirements of this section and current policy guidance.

(4) The State shall make its approved administrative plan part of the State emergency plan, as described in § 205.4 of these regulations.

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

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

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

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

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

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

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

(g) *Approval of funds.* (1) The Regional Director may approve Federal assistance under this section upon his/her determination that:

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

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

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(2) The Regional Director may approve Federal assistance based on his/her estimate of the amount required to meet the necessary expenses and serious needs of disaster-affected individuals and families which cannot be met through assistance from other means. The Regional Director may authorize the use of the letter of credit as a mechanism for funding the IFG program.

(h) *Advance of funds.* (1) The GAR shall submit requests, and the Regional Director may authorize advances of funds, for the Federal share of grants under this section.

(2) The Regional Director may also authorize advances of funds for the State share of grants under this section if the State is unable immediately to pay its 25 percent share.

(i) The Governor shall make the initial request to the Regional Director for an advance of the State share. The request shall include:

(A) A certification that the State is unable immediately to pay its 25 percent share;

(B) A statement of the specific actions taken or to be taken to overcome the inability to provide the State share;

(C) A certification that the State will repay this advance when it is able, and the date for this repayment; and

(D) An estimate of the total amount needed to meet the State's 25 percent share.

(ii) The GAR may submit to the Regional Director subsequent requests for advances of the State share.

(3) The Regional Director may recover any advance of the State share not repaid by the date established in accordance with paragraph (h)(2)(i)(C) of this section, or any excess advance of the Federal share not refunded within 30 days after completion of the Federal audit (or State audit in those programs where no Federal audit is conducted), in accordance with 44 CFR Part 11, Subpart C, including the offset of Federal funds to which the State would otherwise be entitled.

(4) The Regional Director may withhold advances under this section if the State has failed to repay an advance of its share in a previous IFG program

in accordance with the date in paragraph (h)(2)(i)(C), of this section, or has failed to repay previous excess advances of Federal funds after completion of the Federal audit (or State audit in those programs where no Federal audit is conducted).

(i) *Reimbursement to the State.* (1) The Regional Director shall approve reimbursement to the State of the Federal share of eligible costs on the basis of a voucher filed by the State and supported by a State audit. Costs that are eligible for reimbursement include 75 percent of the cost of meeting necessary expenses or serious needs of individuals and families, and expenses incurred in administering the grant program. The maximum amount of State administrative expenses that is eligible for reimbursement is computed by dividing the eligible Federal cost of meeting necessary expenses or serious needs of individuals and families by 0.97, and subtracting the eligible Federal cost of meeting such expenses or needs from the quotient.

(2) If a State requests reimbursement for a grant that is improperly or inadequately documented, or that does not conform to the State administrative plan, the Regional Director shall suspend the claim.

(3) The State may request reimbursement for a grant that has not yet been expended or committed by the grant recipient. The State shall justify such a claim, including the steps being taken to eliminate it. If the Regional Director determines that the justification is inadequate, he/she shall suspend the claim.

(4) The State may request reimbursement for a grant that was made on the basis of fraudulent information, that was misapplied by the grant recipient, that duplicates assistance from other means, or that was authorized for acquisition or construction where proof of purchase of flood insurance was not provided to the State. If the State has taken the action required by its administrative plan to recover the grant funds, but has been unable to do so, the Regional Director shall approve the claim.

(j) *Audits.* The State shall audit each grant program in accordance with audit guidelines provided by the

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Regional Director. All claims are subject to Federal audit.

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

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

(ii) The State shall accept applications from individuals or families for a period of 60 days following the declaration date, and for a minimum of 30 days thereafter when the State determines that extenuating circumstances beyond the applicants' control (such as, but not limited to, hospitalization, illness, or inaccessibility to application centers) prevented them from applying in a timely manner;

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

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

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

(1) *Appeals.* (1) The State may appeal to the Regional Director any Federal action under paragraphs (g) through (k) of this section. An appeal shall be made in writing within 30 days of the date of the Federal action. The Regional Director shall review the material submitted, conduct an investigation if appropriate, and, not later than 15 days following receipt of the appeal, notify the State of his/her decision in writing.

(2) The State may further appeal the Regional Director's decision to the Associate Director. This appeal shall

be made in writing within 15 days of the Regional Director's decision. Action by the Associate Director is final.

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

[47 FR 10554, Mar. 11, 1982]

Subpart E—Public Assistance

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority, unless otherwise noted.

SOURCE: 45 FR 53957, Aug. 13, 1980, unless otherwise noted.

§ 205.70 General.

This subpart provides policies and guidelines for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs of Pub. L. 93-288, as amended. It includes criteria for determining eligibility of assistance under Sections 305, 306, 402, 403, 415, 416, 418, and 419 of Pub. L. 93-288, as amended. Refer also to Subparts J, K, and M, and to 44 CFR Parts 9 and 10 of these regulations for additional guidance related to eligibility determinations.

§ 205.71 Definitions.

(a) "Educational institution" means:

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

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

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

(b) "Predisaster condition" means the state of repair or serviceability of a facility immediately prior to the disaster, taking into consideration prior

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damages, age, deterioration, and any limitations upon its operation.

(c) "Predisaster design" means the size and capacity of a facility when the major disaster occurred, taking into account its major features, as originally placed in service but updated by any modernization or expansion of the facility, prior to the major disaster, to provide added capacity for public services.

(d) "Private nonprofit facility" means any private nonprofit educational, utility, emergency, medical, and custodial care facility, including those for the aged or disabled, and those on Indian reservations.

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

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

(ii) Buildings, structures and related items used primarily for religious purposes or primarily in connection with any part of the program of a divinity school, or department of divinity, as defined by Section 1201 of the Higher Education Act of 1965.

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

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

(4) "Medical facility" means any hospital, outpatient facility, rehabilitation facility, or facility for long term care, as defined by the Associate Director, and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such

medical facilities even if not contiguous.

(5) "Custodial care facility" means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for such persons as the aged and disabled; such persons do not require day-to-day care by doctors or by other professionals but do require close supervision and some physical constraints of their daily activities.

(e) "Private nonprofit organization" means any nongovernmental agency or entity that currently has:

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

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

(f) "Standards" as used in this subpart means codes, specifications, or standards.

§ 205.72 Applicant eligibility.

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

(b) Private nonprofit organizations or institutions, owning and operating educational, utility, emergency, medical or custodial care facilities, are eligible applicants.

(c) An Indian tribe (or authorized tribal organization or Alaskan village or organization, which exists for public service,) is also an eligible applicant. In those cases where the State is unable or unwilling to process a project application on its behalf, such applicant may submit its project application directly to the Regional Director.

(d) A public entity is eligible for assistance when its requests are submitted by a State or a political subdivision of the State. Organizations which are formed for a public purpose and whose direction and funding are provided primarily by one or more political subdi-

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visions of the State are normally considered to be public entities.

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

(f) *Eligibility of applicants for emergency snow removal assistance.* (1) To qualify as an eligible applicant, any State or local government (as defined in section 102(4) or (6), of the Act) must have adequately documented responsibility for emergency snow removal from thru public roads or thru public streets.

(2) Private non-profit organizations are not eligible.

(g) Under Pub. L. 93-288 grants to eligible applicants are discretionary and are based on FEMA grant approval for proposed work and subject to any conditions upon which that grant approval was based.

[45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980]

§ 205.73 General work eligibility.

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

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

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

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

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

(c) *Restoration of leased facilities.* (1) Applicant-owned facilities are eligible, except when leased and the lease places such responsibility on the lessee.

(2) Facilities owned by others but under lease to an applicant are eligible to the extent of the applicant's responsibility under the lease.

(d) *Assurances.* As a condition for any grant or loan under the Act, the State and the applicant shall provide the assurances required by the Regional Director and accompanying the project application or loan application. These assurances are legally binding when offered by the applicant and the State, and approved by the Regional Director.

(e) *Facilities serving a rural community or unincorporated town or village.* To be eligible, a facility or system not owned by a State or local government must meet the following requirements:

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

(2) Ownership is vested in a not-for-profit organization; *and*

(3) Proposed work on the facility satisfies eligibility requirements otherwise applicable to public facilities under section 306 of the Act and must be necessary to restore essential public services on an emergency basis.

(f) *Grants-in-lieu.* A grant-in-lieu is a categorical grant, based on work eligible under section 306 or 402(e) of the Act, which the grantee may use to provide a larger, more elaborate or equivalent facility that as a minimum replaces the design or capacity of the public facility damaged or destroyed by the major disaster. The facility to which the grant-in-lieu is applied must be restored to its predisaster capacity and serve the same purpose or function as the damaged facility.

(g) *Time limitations.* Timely performance of eligible work is necessary to minimize costs of work and to avoid delays in restoration of public services. The Regional Director may approve reimbursement to an applicant for eligible work performed prior to the Federal damage survey, but within the time limitations and the disaster-affected area. When, due to circumstances not beyond its control, an applicant fails to comply with the approved time limitations, the Associate Director, or his/her designee may decline to approve an extension of time for starting or completing the approved work.

(h) *Maintenance.* Routine or regular maintenance is not eligible. To be eli-

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gible, repairs or replacements of damaged facilities which are of the types usually performed as maintenance, must:

- (1) Be of disaster scope and magnitude, and
- (2) Be essential to restore the disaster condition and design of the damaged or destroyed facilities, and
- (3) Be performed on an expedited basis.

§ 205.74 Emergency work.

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

(2) When immediately necessary and no lesser emergency work is feasible, permanent restorative work on facilities damaged or destroyed by a major disaster or emergency may be expedited as emergency work under sections 305 or 306 of the Act. Eligibility of such emergency work shall be determined separately from any other permanent restorative work eligible under section 402 of the Act.

(3) In determining public interest for emergency work for which these regulations require such determination, the Regional Director shall determine whether the work is necessary to:

- (i) Eliminate immediate threats to life, public health, and safety; or
- (ii) Eliminate an immediate hazard which threatens substantial destruction of undamaged improved public or private property; or
- (iii) Assure economic recovery of the affected community to the benefit of the community-at-large; or
- (iv) Provide emergency facilities when necessary to resume essential public services.

(4) In determining whether such emergency work is in the public interest, the Regional Director may require certification by local, State, or Federal health officials, including identification and evaluation of the threat and

recommendations of the emergency work necessary to cope with the threat. Refer also to 44 CFR 205.70.

(b) *Debris removal.* No such work shall be performed unless the affected State or local government first provides to the Regional Director written assurances of rights of entry and indemnification required by FEMA. When approved in the public interest by the Regional Director the following types of emergency work are eligible:

(1) Clearance of debris and wreckage from publicly and privately owned land and waters.

(2) Demolition and removal of public and private buildings damaged beyond repair.

(3) Cleanout of reservoirs, debris catch basins, streams, and opening of drainage channels or facilities only under section 306 or 403 of the Act. Such clearance shall be limited to the removal of materials which are foreign to that facility and which were deposited by the disaster. It is not in the public interest to clean out debris catch basins at Federal expense that have a remaining capacity of storing debris that could be expected from a five-year storm. In determining public interest, past history of clean out of such facility shall be considered. Some removal of debris, deposited prior to the Presidential declaration, may be required as a condition for Federal funding under this section.

(c) *Emergency protective measures.*

(1) The Regional Director may approve emergency protective measures under section 306(a)(4) of the Act which he/she determines are in the public interest. Such emergency work to protect property must be justified further by favorable benefits when compared to Federal costs involved and by providing widespread benefits to the community-at-large.

(2) Emergency protective work to prevent additional damage to improved property is eligible only when the effects of a declared major disaster or emergency have severely damaged or destroyed facilities and further destruction to improved property is threatened soon by subsequent similar disasters or emergencies. When approved, such emergency work is limited to the essential measures required

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to protect the community-at-large against similar disasters or emergencies that would be expected to occur not less frequently than every five years, or to restore protection as existed prior to the disaster, whichever is lesser.

(3) Removal of health and safety hazards. The following are examples of measures that may be eligible when approved in the public interest by the Regional Director: disposal of dead animals; drainage of water trapped as a result of a major disaster or emergency; pumping of basements only where there is flooding of numerous basements in the disaster-affected area; decontamination of private wells or pumping septic tanks only where pollution problem is widespread; vector control of insects involving a serious health hazard to humans.

(4) Landslides. To be eligible for FEMA reimbursement, emergency work shall be performed during the incidence period for the major disaster or emergency, except under unusual circumstances where the Regional Director determines that the proposed work is primarily disaster-related and in the public interest. Examples are debris removal, simple drainage measures, and emergency repairs to damaged public facilities. Permanent stabilization of a landslide is not attainable usually by such emergency measures.

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

(i) The Regional Director determines that emergency repair or replacement of the facility is in the public interest, or economically eliminates needs for temporary housing, with no alternative access facilities immediately available within a reasonable distance, and

(ii) The necessary emergency work can be provided on a one-time basis and will in no way obligate the Federal Government to fund further emergency work or maintenance.

(6) Emergency snow removal assistance.

(i) Definitions:

(A) "Local roads and streets" means local county roads and city streets which do not serve thru traffic and are of only local interest. Their main function is to provide access to abutting property.

(B) "Collector roads and streets" means local collector roads and streets which serve thru traffic and provide access to higher type roads and facilitate community activities but are primarily of local interest. One of their major functions is to provide access of abutting property.

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

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

(ii) *Eligible work.* When approved by the Regional Director, the following types of facilities are eligible:

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

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

(iii) *Ineligible work.* The following types of facilities are not eligible:

(A) Local roads and streets (these normally will include alleys and cul-de-sacs and residential streets where 24-hour parking is permitted during snow emergencies).

(B) Other facilities including:

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

(2) Playgrounds

(3) Recreational or park facilities

(4) Airports (except for emergency road access)

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(5) Public housing authorities (except for emergency entrance to housing areas)

(6) Cultural facilities

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

(7) Work that is immediately necessary as the result of a major disaster and directly related to permanent work eligible to be performed later under section 402 of the Act will normally be approved by the Regional Director in the public interest as emergency protective measures under section 306 of the Act.

(8) Water control facilities. Emergency work on water control facilities shall be limited to that required to insure the structural integrity of the damaged facilities or to restore disrupted public services when necessary to meet emergency needs of the community-at-large.

(9) Ice jams. FEMA assistance to remove ice jams is not eligible.

(10) Emergency protective facilities installed will be eligible for removal under the Act only when such facilities are directly affecting the operations of, or access to, public facilities required by the applicant in its normal day to day operation.

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

(e) *Emergency public transportation.* The Regional Director may provide emergency public transportation in a disaster-affected area to meet emergency needs and to provide transportation to public places and such other

places as necessary for the community to resume its normal pattern of life as soon as possible. Any transportation provided under this section is intended to supplement but not replace predisaster transportation facilities that remain operable after a major disaster. FEMA funding of such emergency transportation will be discontinued by the Regional Director as soon as the emergency needs have been met.

145 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980]

§ 205.75 Permanent work.

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

(2) Standards. (i) To be applicable for Federal grant assistance under section 402 of the Act, standards for repairs, or for new construction, must be in writing, formally adopted, enforced, and in general use when the major disaster occurred, except:

(A) Those standards prescribed by the Associate Director

(B) Those standards authorized as deviations by the Associate Director.

(ii) In those cases where no standards are applicable, Federal grant assistance for permanent work under the Act shall be limited to restoring the facility to its predisaster condition and predisaster design to the extent practicable.

(iii) In restoring damaged or destroyed facilities by use of grant assistance for permanent work under the Act, the Regional Director may authorize minor disaster proofing not required by applicable codes, specifications or standards, when in the public interest. Refer also to 44 CFR 205.70.

(iv) Under section 406 of the Act, as implemented by 44 CFR 205.402(d), the Associate Director may prescribe standards which then are applicable

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only to Federally-assisted projects for permanent work.

(v) Under section 402 of the Act, when the Associate Director determines that conformity to existing applicable standards will jeopardize public health and safety, he/she may authorize appropriate standards as deviations after consultations with the Regional Director, the Governor's Authorized Representative, and the applicants. Prior to the authorization of such deviations, the State or local government having jurisdiction in the affected areas shall also adopt and enforce these new standards for all like projects. Refer also to 44 CFR 205.70.

(3) Materials. For all eligible repairs, replacements, rebuilding or other restorative work, the most economical materials shall be used, taking into consideration the following: Predisaster design and condition of the facility; current applicable standards, if any; and predisaster public services or usage of the facility. Consideration shall also be given to protection of the environment (44 CFR Part 10) and to floodplain management, if applicable, (44 CFR Part 9).

(4) Public Interest. Refer also to 44 CFR 205.70. In determining whether permanent work is in the public interest, the Regional Director shall determine that:

(i) The applicant and the work involved are eligible under the Act and these regulations.

(ii) The work is necessary for the benefit of the community-at-large.

(iii) The outlook for continued future public use of the restored facility and the ratio of benefits to costs of restoration are favorable.

(5) Repairs. (i) A facility is considered repairable when in terms of current applicable standards for repairs in effect at the time of the disaster:

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

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

(C) Such permanent repairs are a practicable alternative under 44 CFR

205, Subpart M, 44 CFR Part 9 and 44 CFR Part 10 when applicable and are determined by the Regional Director to be in the public interest. If not, the Regional Director may authorize emergency repairs under section 306, Pub. L. 93-288, to restore essential public service and shall then decline to approve any permanent restorative work in accordance with 44 CFR Part 9.

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

(iii) Only those repairs will be approved which restore the portions of the structure damaged by the major disaster.

(6) Replacement. If a damaged facility is not repairable to predisaster condition as determined by the Regional Director, approved restorative work shall include replacement of the facility on the basis of its predisaster design, in conformity with applicable standards for new construction. Refer also to 44 CFR Parts 9 and 10 and to 44 CFR Part 205, Subpart M, for additional guidance where applicable.

(7) Relocation. When the Regional Director determines that there is a practicable alternative to restoring a facility in a high hazard area he/she may approve relocation to the less hazardous site. In each such case an environmental assessment is required and the applicant shall provide the new site. Refer also to 44 CFR 205.76(e)(6).

(8) Feasibility studies. In those cases where the decision to repair or to replace the damaged facility depends upon the relationship between repair costs and replacement costs, and the project is of sufficient magnitude, a feasibility study may be undertaken.

(9) Limited use facilities. Facilities which were in limited use prior to the disaster, or were being used for other purposes than originally designed, may be eligible for assistance only to the extent necessary to restore immediate predisaster capacity for such use.

(10) Inactive facilities. Facilities that were not in active use at the time of occurrence of the major disaster are

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not eligible except in those instances, as determined by the Regional Director, where the facilities were only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget and was scheduled prior to the major disaster to begin within a reasonable time.

(11) No action. (i) The Regional Director may decline to approve Federal funding to restore facilities at the original site when such facilities were subject to frequent repetitive heavy damages or destruction.

(ii) The Regional Director shall decline to approve Federal funding when he/she determines in accordance with 44 CFR Part 9, 44 CFR Part 10, or 44 CFR Subpart M that FEMA funding is barred. For each such determination, there is no flexible funding option under Section 402(f) or in lieu contributions under Section 419 Pub. L. 93-288, as amended.

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

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

(14) Consumable supplies. Consumable supplies damaged or lost in a disaster are eligible for replacement but limited to a 30-day requirement of each item replaced. However, the Regional Director may approve additional requirements for certain items for which he determines that minimum economical stockage levels exceed 30 days.

(15) Seeding. Seeding shall normally be limited to broadcast seeding without mulching or fertilizer during the regular seasons when such work is performed locally. The Regional Director may approve broadcast seeding to retard erosion in disaster-affected areas and in areas disturbed by eligible work.

The Regional Director may approve mulching, fertilizer, and watering only

on highway slopes or where required to maintain the structural integrity of a facility, and in areas where sodding is eligible but seeding is substituted.

(16) Sodding. Sodding is not eligible except when the local practices of the applicant would require sodding as in golf greens and in certain grassy areas in parks or public places. Seeding shall be substituted whenever feasible.

(17) Landslides. Section 402 of the Act provides for restoration of damaged or destroyed facilities which are man-made features or improvements. The site is the owner's responsibility. Permanent stabilization of a landslide area can be quite costly and may not produce the desired results. When the Regional Director determines that no practicable alternative exists, he may decline to provide such grant assistance for restoration of facilities within the slide area. Permanent work to stabilize a landslide is not eligible.

(b) [Reserved]

(c) *Road and street facilities or systems.* (1) Width standards. The Associate Director has prescribed minimum bridge width standards which are applicable to bridge replacement (but not to repairs) involving FEMA funding. These standards appear in applicable handbooks and may be superseded by changes when approved by the Associate Director.

(2) Approach roads. If the approach roads were undamaged and a bridge can be replaced at the existing site without unacceptable traffic safety hazards, the Regional Director may approve eligible restoration costs to replace the bridge at that site in accordance with current applicable standards. If relocation of the bridge is approved to achieve a safer road alignment, any replacement of existing, undamaged approach roads and all other work on approach roads not resulting directly from major disaster damages are the responsibility of the applicant. Such relocated approach roads of any replacement bridge shall conform at least to the minimum American Association of State Highway and Transportation Officials (AASHTO) standards outlined in Tables 1 thru 7, AASHTO Geometric Design Guide for Local Roads and Streets. Skewing of any replacement bridge to conform to

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a FEMA-approved safer alignment is eligible for Federal reimbursement. If an applicant decides not to provide at its own cost the approach roads, relocated and upgraded to minimum AASHTO standards, Federal assistance under the Act shall be limited to a replacement bridge at the original location with the same capacity as existed at the time of the disaster and with width not exceeding the minimum safe standards stated above.

(3) Sidewalks. Sidewalks on bridges are not eligible unless they existed on the damaged bridge prior to the disaster, or are required by current, applicable standards.

(4) Waterway openings. In the design of bridge and culvert waterway openings, consideration will be given to the drainage area involved above and below the bridge site. Federal regulations pertaining to the National Flood Insurance Program provide for prevention of "new encroachments" into 100-year floodway. However, the replacement of bridges under the Act which were damaged or destroyed is not "new encroachment" within the meaning of those regulations. Waterway openings for bridges and culverts shall be based on predisaster design and capacity in accordance with current applicable standards and additional guidance in 44 CFR Part 205, Subpart M, 44 CFR Part 9 or 44 CFR Part 10.

(5) Floodway. Work in floodway related to bridge restoration, including lining and straightening or bank protection such as rip-rap that did not exist prior to the major disaster, is not eligible unless such work will reduce overall project costs of new construction eligible for Federal funding.

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

(7) New drainage structures. Construction of new drainage structures in those cases where lack of drainage structures caused flooding damage is not eligible, except for disaster proofing. In accordance with 44 CFR Part 9 or Part 10 of these Regulations, the

Regional Director may require that an applicant provide without reimbursement adequate drainage structures or erosion-resistant structures, as a condition for approval of Federal grant assistance for the placement of a fill, embankment, or other facility.

(8) Culverts. Culverts that are washed out and destroyed may be replaced by culverts of similar construction or by larger culverts if required by applicable standards. However, if a culvert is merely plugged, and no other damage has been sustained, cleaning of the culvert is routine maintenance and therefore is not eligible.

(d) *Water control facilities.* (1) Repairs or other restorative work will not exceed restoration in accordance with current applicable standards including appropriate hazard mitigation measures as practiced by the applicant throughout its system of other like facilities:

(i) Predisaster condition and design capacity.

(ii) Previously existing elevations, and

(iii) Cross sections

(2) In those cases where inadequate maintenance by the applicant prior to a major disaster significantly diminished the predisaster design or hydraulic capacity of a facility or system, the Regional Director shall require the applicant to correct the maintenance deficiencies of the entire facility or system as a condition for Federal grant approval. The approval will be limited to restoration of the design and condition of the facility or system as it existed immediately prior to the major disaster. The applicant shall submit a plan and schedule for the required maintenance work acceptable to the Regional Director before his/her approval of otherwise eligible costs. If these conditions are not satisfied, the Regional Director may decline to approve Federal assistance. Final payment of approved Federal assistance may not be made until the design capacity of the facility or system has been restored and all maintenance deficiencies have been corrected.

(e) *Public buildings and equipment.* (1) Repairs to buildings. Where an eligible building receives extensive

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damage but remains structurally sound, the Federal contribution is limited to repairing the damage in accordance with applicable standards for repairs.

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

(3) Office equipment. When damage to office equipment is repairable, only repair is authorized. Comparable office equipment such as typewriters, desks and chairs, when available from Federal and State surplus or commercially, shall be procured for replacement items.

(4) Service equipment. Police cars and motorcycles, fire trucks, public works construction and maintenance equipment, and other such equipment damaged as a direct result of the disaster, but not as the result of the disaster operations, are eligible for repair or replacement in accordance with the following criteria:

(i) Repairs. (A) Only those repairs necessary to return service equipment to its predisaster repair standards are eligible. The allowable repairs normally will not exceed the "Blue Book" retail value of the piece of equipment, less any salvage value and insurance recoveries.

(B) As a condition for Federal grant assistance for repairs, the applicant shall correct any predisaster deficiencies needed to restore the service equipment to safe operating condition without Federal assistance except for disaster-related eligible repairs.

(ii) Replacement. Non-repairable service equipment will normally be replaced with used equipment of approximately the same age and value to the extent such equipment is readily available within a reasonable time and distance. Any equipment eligible for replacement must have been in active use or temporarily out of service.

(5) Library books and publications. Replacement of library books and publications is based on an inventory of the quantities of various categories of

books or publications damaged or destroyed. When damage to books is repairable, only repair is authorized. Federal grant assistance shall be based on used replacements, when reasonably comparable and available. Discounts normally are available and must be considered. The Regional Director may authorize equivalent replacement, such as substituting microfilm copies of newspapers and periodicals, if they can be provided at no greater Federal cost than replacement of the damaged items in kind.

(f) *Public utilities.* (1) Repair of public utility distribution systems normally requires the same general type of materials as previously existed. If more economical and satisfactory alternate materials are available, they shall be used.

(2) Cleaning of storm and sanitary sewer lines damaged by the disaster is eligible only to the extent it is disaster-related and necessary to restore adequate functioning of the system under conditions expected each year.

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

(4) The Federal contribution shall not provide a higher level of sewage treatment. If a higher level of treatment is required to meet State or Federal standards, the additional cost of such facilities is the responsibility of the applicant.

(g) *Facilities under construction.* (1) "Under construction" means that period of time from the initiation of construction by applicant forces to final completion of all eligible work or from the award of the prime contract to the applicant's final acceptance of the facility from the contractor. Although the applicant may have accepted certain features of the project for use, the project is considered to be under construction until it is finally accepted.

(2) Only those repairs or replacements are eligible that are necessary to restore facilities damaged or destroyed by a major disaster substantially to predisaster condition. Restoration of the site or natural setting for such facilities is the owner's responsi-

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bility and is therefore not eligible. Disaster proofing is not eligible.

(h) *Private nonprofit facilities.* (1) Eligibility criteria for restorative work on facilities owned by eligible private nonprofit organizations are the same as for like work on similar facilities owned by any eligible applicant.

(2) As a condition for Federal grant assistance, such facilities must have been operated at the time of the major disaster in a manner to carry out fully the purposes of the facilities and of the owning organization or entity, except those facilities under construction.

(3) As a condition for Federal grant assistance, the eligible owning organization shall provide all assurances normally required from any applicant in submitting a project application plus any additional assurances required by the Regional Director, including but not limited to the following: The grant recipient shall operate and maintain the restored facilities continuously after completion throughout their useful life.

(4) The eligible owning organization must provide the necessary permits and licenses to repair, restore, reconstruct or replace the facility in accordance with the project application and subsequently to maintain and operate the facility. Refer also to 44 CFR 205.76(a)(15) and (a)(16).

(5) Repair or replacement of any educational facility is not eligible for which disaster relief assistance would not be authorized if it were a public facility under the Act, under Pub. L. 81-815, or Title VII of the Higher Education Act of 1965.

(6) Repair or replacement of any hospital or other medical care facility in any disaster-affected area is not eligible:

(i) For which disaster relief assistance would not be eligible under the Act if it were a publicly-owned facility, or

(ii) Where the Regional Director after consulting with the State hospital planning agency, determines that a significant surplus of such facilities exists, or

(iii) Where after consulting with the State hospital planning agency, he/she determines that a significant sur-

plus of such facilities would be created by the proposed work, or

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

(i) *Publicly-owned parks and recreational facilities.* (1) Publicly-owned facilities which constitute physical installations in the area such as playgrounds, swimming pools, boat docks, bath houses, tennis courts, picnic tables, etc., are eligible for repair or replacement when damaged or destroyed as the result of a major disaster.

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

(3) Repair or replacement of other damaged or destroyed natural areas is not eligible except to eliminate an immediate threat to public health and safety.

(j) *Removal of timber.* (1) When in the public interest, the Regional Director may approve grants to a State or local government for the purpose of removing from privately owned lands timber damaged as a result of a major disaster. Refer also to 44 CFR 205.76(e)(9).

(2) Approved Work Practices. Bent, twisted, downed timber of commercial value will be salvaged or cleared when approved under 44 CFR 205.75. This includes the construction of approved temporary access roads required for removal of the damaged timber.

(i) Slash created by approved timber removal may be disposed of by not more than one of the following practices when approved by the Regional Director:

(A) Prescribed burning.

(B) Drum chopping.

(C) Raking, windrowing, and burning.

(ii) Where such slash is to be burned, appropriate permits will be obtained from the Forestry Commission and/or other appropriate

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agency(ies), and other precautions and notifications made as required by law.

(iii) No such slash should be placed where it will interfere with existing drainage facilities.

§ 205.76 Eligibility of costs.

(a) *General.* (1) This section provides policies and guidelines for determining eligibility of costs of work eligible under the Act that may be paid to any eligible applicant or other recipient of this grant assistance. The subparagraphs which follow are generally applicable to eligibility of costs. Only reasonable costs of eligible work are reimbursable.

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

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

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

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

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

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

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

(vii) Be net of all applicable credits.

(3) Funding to any applicant for costs that are reimbursable by another Federal agency under its own statutory authorities is not eligible under the Act.

(4) The amount of Federal reimbursement made to an applicant under categorical funding or under a small project grant is limited to the eligible

cost of performing work approved by FEMA. This limitation is not intended to restrict the type and cost of work which the applicant may choose to undertake. If the applicant performs work in excess of the approved amount, Federal financial assistance is limited to the costs of eligible work approved by the Regional Director. Flexible funding under section 402(f) of the Act, is limited to 90 percent of the estimated costs of eligible permanent restorative work.

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

(i) There is no duplication of benefits prohibited by section 315 of the Act, or

(ii) Such funding is not in violation of applicable laws and Federal regulations.

(6) Approval of Federal funding may be withdrawn for any project not started within approved time limitations, including extensions. Federal funding is not eligible for work performed after the approved termination date, including extensions. Refer also to 44 CFR Part 205, Subpart H.

(7) Administrative expenses. Administrative expenses attributable to requesting, obtaining, and administering FEMA grant or loan assistance are not eligible, including but not limited to the following:

(i) Preparation or processing of project applications, reports, appeals, inspection reports, audits, and claims for payment.

(ii) Performance of owners responsibilities.

(iii) Operation of Emergency Operations Center.

(iv) Salaries, wages, and expenses of State and local officials who are responsible for directing regular governmental activities.

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

(vi) Office supplies and equipment.

(vii) Rent.

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(viii) Telephone and telegraph expenses.

(8) Grant-in-lieu. (i) The amount for which a grant-in-lieu is approved is limited to the estimated costs of the eligible work.

(ii) Proportionate sharing of costs is not an acceptable method of determining eligible costs for a grant-in-lieu.

(iii) The only permissible basis for increasing or reducing the Federal funding under a grant-in-lieu is a substantial error or omission in defining the approved scope of eligible work or in the approved estimated reasonable costs of such work. In cases where the actual audited costs for completing the project are less than the approved grant-in-lieu, the final payment will not exceed the actual audited costs. In such cases the Regional Director or the Associate Director will make appropriate reductions in the Federal payment based on his/her determination of costs of completed betterments.

(9) Equipment rental. Rental of privately-owned equipment to perform eligible disaster work is eligible. However, the rental rates must be comparable to going rates in the locality for similar types of equipment. If not, reasonable rates as determined by the Regional Director shall be substituted in approval of project applications, or of claims. When auditable records are available, the actual audited costs of equipment may be considered in processing appeals.

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

(B) Costs of hand tools (shovels, handsaws, hammers, etc.), personal equipment, and protective clothing reasonably lost, worn out or destroyed through disaster use in performing eligible work.

(ii) Not eligible: Costs for losses, damage or destruction while in disaster or emergency use of radios, weapons, and other items used regularly in field operations by police and other employees whose duties do not change because of the disaster.

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

(12) Stockpiled items. Costs of all stockpiled items purchased under the Contributions Program (Pub. L. 920, 81st Congress, as amended) for civil defense purposes which are lost, damaged, or destroyed by a major disaster while in storage are not eligible.

(13) Insurance. (i) Cost of insurance required for performance of grant or loan assistance is eligible.

(ii) Insurance purchased by the State, the applicant, or grantee for its protection from any liability arising from assurances made to the grantor, or arising directly or indirectly from use of the grant shall be at the insured's expense and is not eligible.

(iii) The Regional Director shall reduce the grant by the actual applicable amount of insurance proceeds received by the grantee or by any prior insurance commitment for Federal assistance that is delinquent. In the event insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement is limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and up to the limit of the policy.

(14) Acquisition of lands, easements, and rights-of-way. Such acquisitions are the responsibility of the applicant, or grant recipient upon whose behalf project application was made. These costs are usually covered by the assurances accompanying the project application and are not eligible for Federal reimbursement except when approved in the public interest by the Associate Director under unusual circumstances, requiring immediate action beyond State, applicant, or grantee's capabilities, or involving significant cost savings to the Federal Government.

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

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

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

(18) Excess utility costs. Any loss of revenue or added costs or charges for providing utility services is not eligible.

(19) National Guard. (i) Eligible: Actual projects paid by the State not otherwise federally funded for work undertaken by the National Guard on a project basis, included salaries of National Guardsmen directly engaged in project work or supervision.

(ii) Not eligible: Use of National Guard for Public safety, or other security measures.

(20) Cooperative agreements. (i) Eligible: Costs for work performed under cooperative arrangements between State or local governments, but limited to those direct costs of the performing entity, which would be eligible if the applicant had performed the work.

(ii) Not eligible: Costs for work performed under arrangement between a State or political subdivision of a State and a Federal agency, except when approved in advance by the Regional Director.

(21) Work performed by service, fraternal, and other similar organizations which do not normally contract their service for disaster relief. (i) Eligible: Only out-of-pocket costs for equipment, materials, and supplies used or consumed in the performance of eligible work.

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

(22) Prison labor. (i) Eligible: Out-of-pocket costs to an eligible applicant of prison labor performing eligible disaster work, limited to the amount paid the prisoners in accordance with rates established prior to the disaster, and the cost of transportation.

(ii) Not eligible: Costs of food, lodging, and guards. Also, any costs for prison labor utilized by a contractor.

(23) Private nonprofit organizations. (i) Only categorical grants may be approved by the Regional Director for

such eligible grantees. No payment will be made for any work which was not within the scope of responsibility of the eligible private nonprofit organization prior to the major disaster.

(ii) Such grants shall not: (A) Be used to pay any part of the cost of facilities, supplies, or equipment which are to be used primarily for sectarian purposes; or

(B) Be used to pay costs to repair or replace: any facility, equipment, or supplies used primarily:

(1) For religious worship,

(2) For religious instruction, or

(3) In connection with any part of the program of a school or department of divinity.

(24) Negligence. No Federal reimbursement shall be made to any applicant for damages caused by its own negligence, by the negligence of any interested public or private organization or entity that is a direct grant recipient, or by any contractor.

(25) Interest and other financial costs. Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith are not eligible.

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

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

(28) Legal fees required in the administration of the grant are eligible. Legal services furnished by the Chief legal officer of a State or local government of this staff solely for the purpose of discharging his general responsibilities as a legal officer are not eligible. Legal expenses for the prosecution of claims against the Federal Government are not eligible.

(29) Other. Any costs not allowable under OMB Circular 74-4 are ineligible for FEMA reimbursement.

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(30) Interest on Advances. Interest earned on advances of Federal funds shall be remitted to FEMA except for interest earned on advances to States or instrumentalities of a State as provided by the Intergovernmental Cooperation Act of 1968 (Pub. L. 90-577) and advances made to tribal organizations pursuant to section 102, 103, or 104 of the Indian Self Determination Act (Pub. L. 93-638).

(b) *Work by applicant's own forces.* (1) In addition to the provisions of 44 CFR 205.76(a), this section provides criteria for eligibility of costs specifically applicable to work by the applicant's own forces, hereinafter referred to as force account.

(2) Personnel. (i) Gross salaries or wages (including overtime) of extra employees of the applicant or grantee are eligible when the employees are engaged in the performance of eligible work, but not to exceed the going wages paid locally for such work.

(ii) Gross salaries or wages (including overtime) of regular employees of the applicant or grantee are eligible for reimbursement, but not to exceed the going wages paid locally for such work except the following types of ineligible costs:

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

(B) Regular salaries of supervisory personnel other than working foremen engage primarily and continuously in field supervision of eligible work.

(C) All payroll costs above each employee's gross pay.

(3) Equipment. (i) The FEMA Schedule of Equipment Rates, or an alternative Schedule of Equipment Rates approved by the Associate Director, is applicable to all reimbursements for equipment that is publicly-owned or owned by other grantees.

(ii) For vehicles or equipment utilized by police, firemen, and other employees whose duties do not change because of the major disaster or emergency, only disaster-related actual costs in excess of average costs for the same period of time for the previous

three years, based on auditable records are eligible.

(iii) For permanently installed fixed equipment, such as pumping stations, only disaster-related actual costs in excess of the average costs for this same period of time for the previous three years, based on auditable records are eligible.

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

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

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

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

(iii) Contracts with any contractor included on any FEMA listing of debarred contractors.

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

(2) Engineering and design. For emergency work such services are usually not necessary and Federal reimbursement may not be justified. The provisions of 44 CFR 205.76(e)(2) are also applicable to any engineering or design services related to emergency work.

(3) Debris removal. No Federal reimbursement will be made to an applicant for its reimbursement of an individual or private organization for the cost of removing debris from his/her own property except those public entities and private nonprofit organizations eligible under section 402(b) of the Act.

(4) Snow removal. (i) FEMA reimbursement will be made to eligible applicants (see Part 44 CFR 205.72(f)(1)) in an amount not to exceed one half of the eligible costs incurred for eligible work performed in designated areas during the established incidence

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period, except in those unusual cases when the applicant and the State are financially unable to cost share as determined by the FEMA Associate Director.

(ii) Any applicant which requested direct Federal assistance for emergency snow removal shall reimburse FEMA for one half of the eligible costs incurred for eligible work performed in designated areas during the established incidence periods including any overhead or administrative expenses paid by FEMA to the Federal agency performing the mission assignment, except in those unusual cases as indicated in § 205.76(d)(4)(i) of this part.

(iii) The following types of costs may be eligible when approved by the Regional Director:

(A) Costs of equipment operations to perform eligible emergency snow removal. Only those types of equipment are eligible that are listed in the applicable Schedule of Rates approved by FEMA.

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

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

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

(A) Costs of hand labor.

(B) Costs of salt, sand, and other such antislip measures. These are normal maintenance costs which do not necessarily increase with the depth of the snowfall.

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

(5) Emergency pumping. Reimbursement for emergency pumping shall terminate promptly after the river or stream has crested, except for removal of trapped water posing an immediate threat to public health and safety.

(6) Access to water control facilities. Emergency repairs to roadways along the top of a water control facility shall not exceed that required to provide

access for emergency work or that which existed prior to this major disaster or emergency.

(7) Vector control. Only disaster-related actual costs in excess of the average cost for the same period of time during the previous three years are eligible when vector control is approved in the public interest.

(e) *Permanent work.* (1) General. In addition to provisions of 44 CFR 205.76 (a), (b), and (c), these specific criteria apply to permanent work under section 402 of the Act.

(2) Engineering and design. Reimbursement for eligible engineering, planning, design, supervision, or inspection services is based upon actual direct costs but shall not exceed the amount approved on the project application, or on a supplemental project application. The Regional Director may approve special services, such as engineering, surveys, soil investigations, resident engineers, and additional construction inspection when justified.

(3) Feasibility studies. Feasibility studies may be reimbursable under the Act when approved in advance by the Regional Director. Costs for feasibility studies primarily concerning alternate facilities, betterments, or post-disaster programs or any project approved for flexible funding are not eligible for reimbursement under the provisions of the Act.

(4) Environmental review. Costs incurred by an applicant to perform an environmental review and assessment are not eligible without prior approval by the Regional Director. Refer also to 44 CFR Part 10.

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

(6) Relocations. When the Regional Director has approved replacement of a facility at a new location under section 402 of the Act, the costs of acquiring the site plus providing to the site

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road access, utilities, and communication lines are the owner's responsibility and are not eligible. The costs of replacing the facility at the new approved location, otherwise eligible under the Act, are reimbursable.

(7) Warranties. Additional costs to provide warranty or guarantee of any repaired or replacement items or facilities are not eligible for Federal reimbursement. However, after applying for relief from the contractor, manufacturer, or supplier, the applicant or grantee may appeal to the Regional Director for any grant assistance that he can justify as disaster related.

(8) Projects under construction. (i) Only categorical grants may be approved for those facilities under construction when damaged or destroyed by a major disaster. Federal reimbursement shall not exceed the net eligible costs to the applicant, to a private nonprofit organization or entity, or to the contractors in restoring a facility to substantially the same condition as existed prior to the major disaster.

(ii) In addition to other provisions of 44 CFR 205.76, the following are not eligible:

(A) Repair or replacement of the site.

(B) Repair or replacement of mobile construction equipment.

(C) Project operation and maintenance.

(D) Idle construction equipment ownership expense or loss of revenue because of damages to construction equipment or for other reasons.

(E) Contractors' administrative or overhead costs not directly related to eligible work including computer costs.

(F) Costs covered by insurance settlements or salvage, including reimbursement which might be received from any other private, State or local government, or Federal agency.

(G) Contractor's profit in those instances where the contractor is the beneficiary of the Federal assistance.

(H) Losses resulting from delays in completion of the work such as contract penalties or loss of revenue.

(I) Costs of disaster proofing.

(9) Timber removal. (i) Eligible costs: (A) Reimbursement for eligible expenses actually incurred in the removal

of damaged timber subject to verification by inspection and audit.

(B) Costs of repair or construction of temporary roads approved by the Regional Director as necessary for access to damaged timber for removal.

(ii) Ineligible costs: (A) Estimated salvage value of timber destroyed by burning or otherwise by the claimant in lieu of practicable salvage operations.

(B) Costs of timber removal for which the Regional Director determines salvage or insurance recoveries by the claimant are applicable.

(C) Debris removal other than provided in approved work practices for primary purpose of timber removal.

(iii) Maximum Payment: Maximum payment for completed approved work practices will be based on the following:

(A) Construction of approved temporary access roads for salvage of damaged timber. 100% of eligible costs not to exceed \$60.00 per thousand linear feet.

(B) Drum chopping: 100% of eligible cost not to exceed \$100.00 per acre.

(C) Prescribed burning: 100% of eligible cost not to exceed \$5.00 per acre.

(D) Raking, windrowing and burning: 100% of eligible cost not to exceed \$140.00 per acre.

Any payment will be minus any residual salvage value, insurance recoveries or other cost-share payments related to timber removal.

(Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792))

(45 FR 53957, Aug. 13, 1980, as amended at 45 FR 64585, Sept. 30, 1980; 46 FR 32588, June 24, 1981)

Subpart F—Community Disaster Loans

AUTHORITY: Secs. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792), unless otherwise noted.

SOURCE: 44 FR 71790, Dec. 11, 1979, unless otherwise noted.

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§ 205.90 Purpose.

This subpart provides policies and procedures for local governments and State and Federal officials concerning the Community Disaster Loan program under section 414 of the Act.

§ 205.91 Loan program.

(a) *General.* The Associate Director, may make a Community Disaster Loan to any local government which may suffer a substantial loss of tax and other revenues as a result of a major disaster or emergency and which demonstrates a need for financial assistance in order to perform its governmental functions.

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

(c) *Interest rate.* The interest rate is the rate determined by the Secretary of the Treasury in effect on the date that the loan (i.e., Promissory Note) is executed. This Treasury rate takes into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity adjusted to the nearest $\frac{1}{4}$ percent.

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

(e) *Term of loan.* The term of the loan is three years, unless otherwise approved by the Associate Director. The Associate Director may consider requests for an extension of the term based on the local government's financial condition. The total term of any loan may not exceed 10 years.

(f) *Use of loan funds.* The local government shall use the loaned funds to carry on existing local government functions of a municipal operation character or to expand such functions to meet disaster-related needs. The funds shall not be used to finance cap-

ital improvements nor the repair or restoration of damaged public facilities. Neither the loan nor any cancelled portion of the loans may be used as the non-Federal share of any Federal program, including those under the Act.

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

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

§ 205.92 Responsibilities.

(a) The local government shall submit the financial information required by FEMA and, if a loan is made, comply with the assurances on the application and the terms of the Promissory Note.

(b) The Governor's Authorized Representative shall certify on the loan application that the local government can legally assume the proposed indebtedness and that any proceeds will be used and accounted for in compliance with the Federal-State Agreement.

(c) The Regional Director shall review each loan application or loan cancellation request received from a local government and monitor the local government's use of the loan. He/She shall inform the Associate Director and submit recommendations when appropriate.

(d) A loan officer, designated by the Associate Director, shall execute a Promissory Note with the local government, establish and maintain a loan account, and administer the loan until repayment or cancellation is completed and the Promissory Note is discharged.

(e) The Associate Director, or a person designated by the Associate Di-

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

§ 205.93 Eligibility criteria.

(a) *Local government.* The local government must be located within the area designated by the Associate Director as being eligible for assistance under a major disaster or emergency declaration. In addition, State law must not prohibit the local government from incurring the indebtedness resulting from a Federal loan. Factors considered by FEMA in determining the eligibility of a local government for a Community Disaster Loan include the loss of tax and other revenues as a result of a disaster, a demonstrated need for financial assistance in order to perform its governmental functions as a political entity, the maintenance of an annual operating budget, and its responsibilities for providing essential municipal operating services to the community. Eligibility for other assistance under the Act does not, of itself, establish entitlement to such a loan.

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

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

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

(ii) A revenue loss of over 5 percent of total revenue estimated for the fiscal year in which the disaster occurred or for the succeeding fiscal year.

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

(i) Sufficiency of funds to meet current fiscal year operating requirements;

(ii) Availability of cash or other liquid assets which can be applied from the prior fiscal year;

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

(iv) Fixed debt requirements;

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

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

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

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

(ix) Danger of municipal insolvency.

§ 205.94 Loan application.

(a) *Application.* (1) The local government shall submit an application for a Community Disaster Loan through the Governor's Authorized Representative. The loan must be justified on the basis of need and shall be based on the actual and projected expenses, as a result of the disaster, for the fiscal year in which the disaster occurred and for the three succeeding fiscal years. This loan request shall be prepared by the affected local government and certified as legal by the Governor's Authorized Representative.

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(2) Waiver of state review. The Regional Director may waive the requirement for a State review if an otherwise eligible applicant is not subject to State administrative authority and the State cannot legally participate in the loan application process.

(b) *Financial requirements.* (1) The loan application shall be developed from financial information contained in the annual operating budget (§ 205.94(b)(2) of this part) and shall include a Summary of Revenue Loss and Disaster-Related Expenses, a Statement of the Applicant's Operating Results-Cash Position, a Debt History, Tax Assessment Data, Financial Projections, Other Information, a Certification, and the Assurances listed on the application. Copies of the local government's financial reports (Revenue and Expense and Balance Sheet) for the three fiscal years prior to the fiscal year of the disaster must accompany the application.

(2) *Operating Budget.* For purposes of the loan, the operating budget is that document or documents approved by an appropriating body, which contains an estimate of proposed expenditures, other than capital outlays for fixed assets for a stated period of time, and the proposed means of financing the expenditures.

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

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

(5) *Estimated disaster-related expenses.* Disaster-related expenses of a municipal operation character should be estimated. These are discussed in § 205.96(b).

(c) *Federal review.* (1) The Associate Director shall approve a community

disaster loan to the extent it is determined that the local government may suffer a substantial loss of tax and other revenues and demonstrate a need for financial assistance needed to perform its governmental function as the result of the disaster.

(2) The loan shall not exceed the lesser of: (i) The amount of projected loss plus the projected disaster-related expenses of a municipal operating character or (ii) 25 percent of the annual operating budget for the fiscal year in which the disaster occurred.

(3) *Promissory note.* Upon approval of the loan by the Associate Director, FEMA, the Loan Officer will execute a Promissory Note with the applicant. The applicant should indicate its funding requirements on the Schedule of Loan Increments.

§ 205.95 Loan administration.

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

(2) When each incremental payment is requested, the local government shall submit a copy of its most recent financial report (if not submitted previously) for consideration by FEMA in consultation with the borrower of whether or not the level and frequency of periodic payments continue to be justified. The local government shall also provide the latest available data on anticipated and actual tax and other revenue collections for the most recent period. Desired adjustments in the disbursement schedule shall be submitted in writing at least 30 days prior to the proposed disbursement date in order to ensure timely receipts of the funds.

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

(c) *Loan Servicing.* Whether or not all loan funds have been drawn, FEMA will reevaluate the total loan justifica-

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tion periodically. The purpose of the reevaluation is to determine whether projected revenue losses, disaster-related expenses, operating budgets, and other factors have changed significantly to warrant adjustment of the scheduled payments of the loan proceeds.

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

§ 205.96 Loan cancellation.

(a) *Policies.* (1) FEMA shall cancel repayment of all or any part of a Community Disaster Loan to the extent that the Associate Director determines that revenues of the local government during the full 3 fiscal year period following the disaster are insufficient, as a result of the disaster, to meet the operating budget of the local government, including additional disaster-related expenses of a municipal operating character.

(2) If the local government reduces the tax and other revenue rates or the tax assessment valuation of property which was not damaged or destroyed by the disaster, the tax and other revenue rates and tax assessment valuation factors applicable to such property in effect at the time of the major disaster or emergency shall be used without reduction for purposes of computing revenues received. This may result in decreasing the amount of any potential loan cancellations as a result of a general reduction in property tax.

(b) *Disaster-related expenses of a municipal operation character.* (1) For purposes of this loan, expenses of a municipal operation character are those incurred for general government purposes, such as police and fire protection, trash collection, collection of revenues, maintenance of public facilities, flood and other hazard insurance, and those other expenses normally budgeted for in special revenue, enter-

prise, and general funds, as defined by the Municipal Finance Officers Association.

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

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

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

(i) Annual Operating Budgets for each fiscal year;

(ii) Financial Records (Revenue and Expense and Balance Sheet) for each fiscal year;

(iii) Audit reports for each fiscal year certifying to the validity of the Operating Statements. The financial statements of the local government shall be examined in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants licensed on or before December 31, 1970, who are certified by a regulatory authority of a State or other political subdivision of the United States. As required by the American Institute of Certified Public Accountants standards, or the equivalent thereof, the auditor must be independent within the meaning of the code of professional ethics of the AICPA; and

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

(2) *Narrative justification.* The applicant may include an appropriate narrative presentation to amplify the financial material accompanying the application and to present any extenu-

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ating circumstances which the local government wants to be considered.

(3) **Audit report.** The audit report accompanying the application shall certify to the fiscal integrity of financial transactions and reports and to compliance with applicable laws, regulations, and administrative requirements. The report should not include recommendations concerning cancellation or repayment.

(d) **Determination.** (1) If, based on a review of the Application for Loan Cancellation and a State and/or Federal audit, the Associate Director determines that all or part of the Community Disaster Loan funds should be cancelled, the principal amount which is cancelled will become a grant and the related interest will be forgiven.

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

(3) The uncanceled portion of the loan must be repaid in accordance with § 205.97 of this part.

§ 205.97 Loan repayment.

(a) **Prepayments.** The local government may make prepayments against the loan at any time.

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

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

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

(3) The Associate Director may defer payments of principal and interest until he makes his final determination with respect to any application for loan cancellation which the borrower may submit.

(4) Any costs incurred by the Federal Government in collecting the note shall be added to the unpaid balance of the loan, bear interest at the same rate as the loan, and be immediately due without demand. Default on the note shall also constitute default under any other debit of the Borrower owing to, or insured by, the Federal Government. Upon any such default, the Federal Government may declare all or part of the note immediately due.

(42 U.S.C. 5184)

Subpart G—Fire Suppression Assistance

AUTHORITY: Sec. 601 and 417, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5201 and 5187); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).

SOURCE: 44 FR 71793, Dec. 11, 1979, unless otherwise noted.

§ 205.100 General.

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

§ 205.101 Federal-State agreements.

Federal assistance under section 417 of the Act is provided in accordance with a continuing Federal-State Agreement for Fire Suppression (the Agreement) signed by the Governor and the Regional Director. The Agreement contains the necessary terms and conditions consistent with the provisions of applicable laws, Executive orders, and regulations, as the Associate Director may require and specifies the type and extent of Federal assistance. The Governor may designate authorized representatives to execute re-

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quests and certifications and otherwise act for the State during fire emergencies. Supplemental agreements shall be executed at least annually in advance of the fire season to update the continuing Agreement.

§ 205.102 Request for assistance.

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

§ 205.103 Providing assistance.

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

§ 205.104 Reimbursement.

(a) Payment is made to the State for its actual eligible costs, subject to verification, as necessary, by Federal inspection and audit. When requested by the State, such payments may be made directly to other Federal agencies for eligible assistance provided by them.

(b) Eligible State costs are reimbursed in accordance with the terms and provisions of the Agreement. Only certain costs incurred in fire suppression operations are eligible for reimbursement. The following paragraphs describe those specific items which are clearly eligible or clearly ineligible.

(1) Eligible costs of the State consist of the following costs reasonably and directly related to fire suppression:

(i) All compensation for employees, except as noted under paragraph (b)(2)(i) of this section, directly engaged in authorized fire suppression activities. Included are field support

personnel, such as cooks, guards, time-keepers, and supply personnel.

(ii) Travel and per diem costs for employees directly engaged in fire suppression activities.

(iii) Expenses to provide field camps and meals when made available to the eligible employees in lieu of per diem costs.

(iv) Cost for use of publicly-owned equipment used on eligible fire suppression work is based on the FEMA Schedule of Equipment Rates.

(v) Cost for use of privately-owned equipment is based on the rental rate: *Provided*, Such costs are comparable to the going rate for the same or similar equipment in the locality, as determined by the Regional Director.

(vi) Cost to the State for use of U.S. Government-owned equipment is based on reasonable costs as billed by the Federal agency and paid by the State.

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

(viii) Repair and reconditioning costs of tools and equipment used in eligible fire suppression activities (other than equipment covered by the FEMA Schedule of Equipment Rates).

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

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

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

(xii) Eligible costs of local governmental fire-fighting organizations reimbursed by the State, pursuant to an existing cooperative agreement, in suppressing an approved incident fire.

(xiii) State costs for suppressing fires on Federal land in cases where the State has a responsibility under a cooperative agreement to perform such action on a nonreimbursable basis.

(2) Costs which are ineligible for reimbursement are:

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(i) Any clerical or overhead costs other than field administration and supervision.

(ii) Any costs for presuppression, salvaging timber, restoring facilities, seeding and planting operations.

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

(iv) State costs for suppressing a fire on Federal land where such costs are reimbursable to the State by another Federal agency under another statute.

(3) In those instances in which assistance under section 417 of the Act is provided pursuant to existing Interstate Forest Fire Protection Compacts, third party eligible costs are reimbursed in accordance with paragraph (b) of this section.

Subpart H—Project Administration

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201) Executive Order 12148 (44 FR 43239); and Delegation of Authority.

SOURCE: 45 FR 45863, July 7, 1980, unless otherwise noted.

§ 205.110 General.

This subpart provides guidance for administration of Federal assistance for State and local governments, and qualifying private nonprofit institutions under Pub. L. 93-288, as amended. The basic policies and procedures are provided for (a) Federal grants to eligible applicants, including the notice of interest, damage survey report, project application, advance of funds, inspection, audit, and final payment; and (b) direct Federal assistance by a Federal agency as the result of a mission assignment. The requirements of OMB Circular A-102, Revised, are applicable and have been incorporated either directly or by appropriate cross reference.

§ 205.111 Definitions.

(a) "Advance of funds" means a sum of money provided to a State, local government, or other Federal agency prior to audit and or final settlement of its claim.

(b) "Applicant" means the State, local government, or eligible private nonprofit facility submitting a project application or request for direct Federal assistance under the Act or on whose behalf the Governor's Authorized Representative takes such action.

(c) [Reserved]

(d) "Bid guarantee" means a firm commitment, such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.

(e) "Bill for collection" means a request issued to an applicant by FEMA to collect excess funds that were over-advanced or paid in error to the applicant.

(f) "Damage Survey Report (DSR)" means a report of damages or requirements caused by a major disaster or emergency including location, description and estimate of required work.

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

(h) "FEMA" means the Federal Emergency Management Agency.

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

(j) "Line item" means a DSR under one category of work attached to a project application.

(k) "Notice of Interest" means an identification of each potential applicant and the categories of disaster requirements each has identified which may be eligible for Federal disaster assistance.

(l) "Offset" means a collection procedure whereby FEMA withholds funds due an applicant or the State in an amount to satisfy an uncollectible debt owed by the applicant on a Bill for collection.

(m) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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(n) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

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

(p) "Public assistance" means the Federal financial assistance provided to State and local governments or to eligible private nonprofit organizations for disaster-related requirements.

(q) "Standards" means codes, specifications, and standards which were in general use and locally enforced at the time of the major disaster, plus those additional standards authorized as deviations or prescribed by the Associate Director in accordance with these regulations.

[45 FR 45863, July 7, 1980, as amended at 46 FR 45138, Sept. 10, 1981]

§ 205.112 Implementation of OMB Circular A-102 (Rev.).

(a) [Reserved]

(b) *Bonding and insurance.* A state or local unit of government receiving a grant under the Act for construction or facility improvement which requires contracting shall follow its own requirements relating to bid guarantees, performance bonds, and payment bonds except for contracts exceeding \$100,000. For contracts exceeding \$100,000, the Regional Director may accept the bonding policy and requirements of the grantee provided that the Regional Director has made a determination that the Government's interest is adequately protected. If such determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price.

(2) A performance bond on the part of the contractor for 100 percent of the contract price.

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

(c) *Property management standards.* Uniform standards governing the utilization and disposition of property furnished by the Federal Government or acquired in whole or in part with Federal funds by State and local governments are applicable as stated in Attachment N, OMB Circular A-102, Revised.

(d) *Procurement standards.* State and local governments are required to apply uniform standards, as stated in Attachment O, OMB Circular A-102 Revised, in establishing procedures for the procurement of supplies, equipment, construction, and other services with Pub. L. 93-288 grant funds. Additionally, the following standards are required:

(1) State and local statutes: The State, local government, or other organization issuing a contract shall assure that procurement of work and services authorized under project applications complies with provisions of the Act, and, unless waived by the Governor's proclamation of an emergency, with State or local statutes, regulations, and ordinances not in conflict with Federal policies or procedures.

(2) Contingent payment: Contracts entered into by an applicant under the Act or the regulations will not contain a provision which makes the payment for such work contingent upon reimbursement under this Act.

(3) The cost-plus-percentage-of-cost and percentage-of construction-cost method of contracting shall not be used. Any CPPC contracts entered into by applicants in violation of this prohibition will be reviewed carefully by the Regional Director or his designee and rejected or reimbursed on a reasonable cost basis at his discretion, depending on the policy considerations involved in the particular case.

(4) Competitive bidding: Contracting for construction work shall be based on competitive bids wherever possible. Any negotiations shall be in accordance with Attachment O, OMB Circular A-102, Revised.

(5) Debarred contractors: The applicant may not enter into any contract with parties whose names appear on the FEMA Consolidated List of Debarred, Suspended and Ineligible Contractors. The Regional Director may

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retroactively approve the use of debarred contractors already under contract on a case-by-case basis if he determines such approval to be in the public interest.

(6) Use of local firms and individuals: In the expenditure of funds for eligible disaster assistance activity which may be carried out by contract with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals who reside or do business primarily in the area affected by such major disaster. Contracting procedures should be designed to give local contractors the opportunity to participate in maximum free and open competition with other contractors. Local preference should be mentioned in the invitations for bids and requests for proposals and also included in the provisions of the contract. Contracting officers may assure the use of local firms and individuals in various ways, such as:

(i) Advertising in the local disaster area.

(ii) Including local contractors in negotiations.

(iii) Subdividing some large contracts down into smaller sized contracts.

(iv) Stressing that a contractor shall give first priority to utilizing resources in the disaster area when procuring supplies and equipment, awarding subcontracts, and employing workmen.

(v) When it is necessary for competitive negotiation, the applicant may permit a local contractor to revise his proposal to meet a lower offering received from a non-local contractor if the original proposal from the local contractor does not exceed 130 percent of the lower non-local proposal.

(vi) When a low bid is received from a non-local contractor under competitive bidding procedures, the applicant may offer a local contractor the opportunity of accepting the work at the low bid amount, provided that the original bid from the local contractor does not exceed 130 percent of the low bid, and a "local preference" clause was included in the bid advertisement.

(c) Audit requirements, as stated in OMB Circular A-102, Attachment P,

are applicable to grants to eligible applicants and other grantees, as implemented by appropriate FEMA regulations and handbooks.

§ 205.113 Federal grant assistance.

(a) *General.* Federal grant assistance is provided on the basis of a project application submitted by or on behalf of an applicant and approved by the Governor's Authorized Representative and the Regional Director. When the Regional Director approves a project application, Federal funds are obligated and the approval is final unless appealed in accordance with 44 CFR 205.120. When assistance is authorized under the Act and a State is unable to assume the responsibilities prescribed in these regulations, an Indian tribe or authorized tribal organization acting as a local government may submit a project application directly to the Regional Director who may provide Federal assistance to such applicant without State participation.

(b) *Types of Federal grants—(1) Categorical grant.* (i) The terms of this type of grant require that the work shall be performed as approved in the project application.

(ii) It shall be used in all cases for:

(A) Facilities under construction;

and

(B) Private nonprofit facilities.

(iii) Reimbursement to the applicant under categorical funding except grant-in-lieu is limited to the actual reasonable cost of performing work approved by the Regional Director as eligible under the Act. It shall not exceed the net eligible cost of restoring a facility, based on the predisaster design of such facility and on the current applicable standards.

(iv) *Grant-in-lieu:* If a grantee desires to construct a larger or more elaborate facility it may apply for a grant, known as a grant-in-lieu, equal to that approved for repair or replacement of the damaged facility in accordance with these regulations. Such replacement facility may be of a design, size or type, or composed of materials significantly different from those of the eligible damaged facility. A grant-in-lieu is available only under a categorical grant.

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(A) A separate request is submitted for each grant-in-lieu based on a separate Damage Survey Report.

(B) The Regional Director's conditions of approval are stated separately for each grant-in-lieu.

(2) *Flexible funding grant (Sec. 402(f) of the Act)*. (i) If the estimated cost of permanently repairing, restoring, reconstructing, or replacing all of its damaged public facilities exceeds \$25,000, an applicant may elect to receive a grant equal to 90 percent of the Federal estimate of such permanent work instead of a categorical grant. This election allows flexibility in the use of the Federal grant. When an applicant determines that restoration of certain disaster-damaged facilities would not be in the public interest, it may choose not to restore those facilities, but to build new public facilities for other purposes. The applicant shall determine that any new facilities constructed are necessary to meet its needs for governmental services and functions in the disaster-affected area. Construction of all federally assisted facilities, including any new or modified construction projects on the applicant's listing of flexibly funded projects, shall be in conformity with current applicable Federal, State, and local standards, including requirements imposed by floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

(ii) The applicant shall declare the election of flexible funding, through the Governor's Authorized Representative, to the Regional Director before the project application is approved.

(iii) A request by the applicant for a change in the type of funding after the project application has been approved shall be referred by the Regional Director with his/her recommendations, to the Associate Director for decision.

(iv) Within 90 days after the date of the Regional Director's approval of the project application, and prior to the start of design or construction of any alternate project, the applicant shall furnish a listing of the public facilities to be repaired, restored, or constructed with the flexible funding

grant; the estimated cost of each; and a proposed schedule of initiation and completion, including estimated quarterly fund requirements. The listing shall provide necessary assurances that reflect applicant's compliance with special requirements, including, but not limited to, floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance. The listing shall also itemize those disaster-damaged public facilities that are not being restored.

(v) Promptly after the completion of all work for which FEMA reimbursement is requested, the applicant shall submit to the Regional Director through the State, an updated listing of completed work. This listing shall contain a description of each completed project and a certification by the Applicant's Authorized Representative of the actual cost of each project involved.

(3) *Small-project grant (Sec. 419 of the Act)*. (i) In any case in which the Federal estimate of an applicant's eligible costs for restoration under section 402 of the Act of damaged or destroyed facilities owned by the applicant, and debris removal and emergency protective work under sections 403 and 306 of the Act, respectively, total less than \$25,000, the Regional Director may approve the applicant's project application for a small-project grant. This approval is in lieu of approval by the Regional Director of any other grant under section 306, 402, or 403 of the Act.

(ii) The grant approved by the Regional Director is based on 100 percent of the estimated eligible costs. Funds approved for debris removal or emergency protective work must be expended for that approved work. Funds approved for permanent restorative work may be expended (A) to perform all approved projects on the Damage Survey Reports or (B) to perform certain of these approved projects, and with the balance of the approved grant to construct certain other public facilities which the applicant determines to be necessary to meet the community's needs for public services and governmental functions in the disaster-affected area. Proposed alternate

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projects must be approved by the Regional Director prior to the start of design or construction.

(iii) This type of grant may not be approved for private nonprofit facilities under section 402(b) of the Act.

(iv) Upon approval of a project application, the Regional Director furnishes the applicant, through the State, with a listing of approved projects. This listing includes a description and approved estimate of cost for each project.

(v) One hundred percent grant to the applicant follows as soon as possible after the Regional Director's approval of the project application.

(vi) Within 30 days following completion of all work performed under a small project grant, the applicant shall complete the above listing by showing the cost of the completed projects, including any alternate projects substituted for those originally approved. This listing shall also include the applicant's certification that all work listed is completed and that all funds were expended in accordance with the purposes of section 419 of the Act, and these regulations, including compliance with special requirements including but not limited to floodplain management, environmental assessment, hazard mitigation, protection of wetlands, and insurance.

(vii) The only permissible basis for increasing Federal funding in a small project grant is a substantive error or omission in defining the approved scope of work or in the approved estimated reasonable costs of such work. Federal funding may be reduced where the applicant fails to comply with applicable laws or FEMA regulations and procedures, including non-compliance with assurances, illegal contracting methods, duplication of benefits and nonconformity with applicable standards. If a supplement to a project application is warranted, and it would increase the small project grant to an amount exceeding \$25,000, the entire grant shall revert to a categorical grant or a flexible funding grant, as approved by the Regional Director.

(viii) Any remaining balance of such grant not expended by the applicant shall be returned to FEMA.

§ 205.114 Project applications.

(a) *General.* This section describes the basic policies and procedures for processing project applications. The Governor's Authorized Representative is responsible for providing technical advice and assistance when required by an applicant in order to obtain eligible Federal grant assistance. All project applications, advances of funds, claims, appeals, payments, refunds, and other related correspondence between a local government or other applicant and the Regional Director, shall be forwarded through the office of the Governor's Authorized Representative for that official's review and appropriate action. This applies to all applicants for public assistance unless otherwise stated. (Refer also to 44 CFR 205.113(a))

(b) *Applicants' briefing.* As soon as possible following the President's declaration of an emergency or a major disaster, the Regional Director and the Governor's Authorized Representative jointly schedule and conduct meetings for all potential applicants for public assistance. Requirements and procedures for requesting and obtaining available public assistance are explained at these meetings. Applicants are furnished informative material, including handbooks and a fact sheet.

(c) *Notice of Interest.* Each applicant submits a Notice of Interest which provides the basis for scheduling the damage surveys.

(d) *Damage Survey Reports.* Damage surveys are usually conducted by a Federal-State inspection team. An authorized local representative accompanies the Federal/State inspection team and is responsible for representing the applicant and assuring that all damage and needs for assistance are inspected. The inspectors record pertinent information on a Damage Survey Report, including a description of the damage, proposed repairs or replacement, and the inspectors' best estimate of the cost of the recommended work.

(e) *Project applications.* Project applications for Federal funding are prepared for the signature of the applicant's authorized agent and submitted

through the Governor's Authorized Representative to the Regional Director for approval. The scope of work and amount of funding requested in the project application are based on Damage Survey Reports, plus such additional documentation as the Regional Director considers necessary. In applying for assistance, the applicant certifies to certain assurances which are part of the project application. (See 44 CFR 205.114(h).)

(1) *Time limitations for submittal.* Project applications and supplements for all projects requested by each applicant shall be submitted as promptly as possible within 90 days after a declaration of a major disaster or within 30 days after declaration of an emergency, or lesser time periods as specified by the Regional Director. When circumstances beyond the applicant's control warrant such action, the Regional Director may at the State's request extend these time limitations. Supplements that cover new work are subject to same time limitations as project applications. Changes in scope of work or increases in estimates of eligible costs for projects previously approved shall be reported to the Governor's Authorized Representative immediately upon determination by the applicant that such changes are necessary. The related supplements shall be submitted as soon as possible thereafter.

(2) *Funding option.* When the total estimated costs requested in the project application exceed \$25,000, the applicant has a choice of the type of funding that best suits its needs, either a categorical or flexible funding grant. (See § 205.113 (b) (1) and (2).) This choice is made on the project application by the applicant. If the applicant chooses flexible funding, then the basic project application shall include only debris clearance, emergency protective measures, and other eligible emergency work and shall be handled as a categorical grant. Permanent work that is otherwise eligible for flexible funding assistance will be included in a supplement(s) to the basic project application.

(f) *Advances of funds.* (1) Final settlement does not occur until the applicant completes all approved work for

which a claim is made and pays all related bills. At the applicant's request, funds may be advanced to meet the current obligations for eligible work and those anticipated for the next 60 days. An advance does not constitute final approval by FEMA of a grant; advances are discretionary and are designed to the convenience of the applicant. Further advances of funds may be made as necessary; however, the total of advanced funds may not exceed the percentage agreed upon by the Regional Director and the Governor's Authorized Representative. The advance of funds is based on a project application approved either as a categorical or flexible funding grant. The applicant may request an advance of funds at the time its project application is submitted or after the project application is approved, depending upon the applicant's need.

(2) States, as well as applicants for categorical or flexible funding grants, shall adopt procedures which minimize the time elapsing between the transfer of funds from the United States Treasury to the State or grantee and their subsequent disbursement by the grantee for authorized program purposes.

(g) *Supplemental project applications.* Supplemental project applications under a categorical grant may be submitted by or on behalf of an applicant for new or additional work, or for other increases in funding found to be necessary after the basic project application was submitted.

(h) *State review and approval.* The Governor's Authorized Representative(s) shall review all project applications and supplemental project applications and shall recommend approval or disapproval. As a condition for FEMA approval, the State and the applicant shall provide the assurances on the reverse side of the standard form used for submitting project applications to FEMA. Any grantee or recipient of such FEMA funding other than the State or the applicant shall also provide these assurances plus such other assurances as may be required by these regulations or by the Regional Director.

(i) *Regional Director's review and approval.* The Regional Director re-

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views the project application and supplemental project applications for eligibility of work, reasonableness of costs, and other considerations. He/she then notifies the applicant through the Governor's Authorized Representative of the approval or disapproval, and conditions, if any. Funds are obligated upon the Regional Director's approval, and advances may be made any time after obligation of funds. In the case of a small-project grant, final reimbursement is made when the Regional Director approves the project application.

§ 205.115 Documentation.

All recipients of Federal grants must maintain adequate disbursement and accounting records of the costs incurred on approved disaster work so that the documentation required by State or Federal audit can be made available. The requirement for auditable records applies to categorical, flexible funding, and small-project grants. Original or source documents must be available for audit purposes, and documentation must be available to auditors at one central office of record. These accounting records and documentation must be kept by the applicant for three years from date of final settlement of claim.

§ 205.116 Project performance.

(a) The primary responsibility for managing the approved projects rests with the applicant.

(1) *Force account.* Eligible work may be performed under force account. The applicant may use its own equipment or other publicly owned equipment. The applicant may rent privately-owned equipment to perform eligible disaster-related work. Each applicant using force account shall maintain adequate, auditable records for each line item of eligible work.

(2) *Contract.* Eligible work may be performed partially or totally by contract.

(b) *Time limitations for completion of work—(1) Emergencies.* Federal emergency assistance shall terminate no later than one month after the determination that an emergency exists, except:

(i) Based on extenuating circumstances beyond the control of the applicant, the Regional Director may extend the time limitation not to exceed an additional two months.

(ii) Based on a determination that such action is warranted, the Associate Director may extend the time limitation completion date beyond three months when requested to do so by the State.

(2) *Major disasters.* (i) Federal assistance shall begin with the start of the incident period under the President's declaration of a major disaster as established in the Federal-State Agreement and, except for the situation described in paragraph (b)(2)(ii) of this section, shall terminate upon expiration of these prescribed deadlines:¹

COMPLETION² DEADLINES

	Months
(A) Debris clearance.....	6
(B) Emergency work.....	6
(C) Permanent work.....	18

¹These time limitations apply to categorical grants and to grants involving flexible funding under sections 402(f) and 418 of the Act. The Regional Director may require an applicant to submit a completion schedule through the State for his approval.

(ii) *Exceptions.* (A) Based on extenuating circumstances or unusual project requirements beyond the control of the grantee, the Regional Director may extend the deadlines under § 205.116(b)(2)(i) (A) and (B) for a period not to exceed six months and under (C) for a period not to exceed one year, on a project-by-project basis.

(B) Based on a determination that such action is warranted, the Associate Director may extend any of the deadlines prescribed by this action.

(iii) The Regional Director may impose lesser deadlines for completion of work under paragraph (b)(2)(i) of this if considered appropriate.

(iv) When an applicant fails to make a timely start of work approved under the Act, the Regional Director shall review the project approval and may suspend or withdraw his approval of Federal funding.

²The Regional Director may also impose deadlines under this subparagraph for initiation of work.

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(c) *Progress reports.* For any permanent projects that the applicant does not expect to complete within 18 months from the date of the disaster declaration, the applicant shall submit work schedules with the application or supplement for approval by the Governor's Authorized Representative and by the Regional Director. When required by the Regional Director or the Governor's Authorized Representative, the applicant shall provide the Governor's Authorized Representative with periodic progress reports of scheduled work, outlining any problems and unforeseen circumstances that are expected to result in a slippage in the schedule. The Governor's Authorized Representative may use such reports to take action to eliminate the causes of delays and to identify projects that may require time extensions. The Governor's Authorized Representative shall provide the Regional Director with copies of these progress reports together with comments and a report of actions taken. Any changes in approved schedules must be justified by the applicant and approved by the Governor's Authorized Representative and by the Regional Director.

(d) *Requests for time extensions.* If an applicant finds that an approved project cannot be completed within the time limit prescribed by the Regional Director, the applicant shall forward promptly to the State a request in writing for additional time, together with justification for delay in completion of the project. The Governor's Authorized Representative shall forward the request with a recommendation to the Regional Director. The Regional Director shall notify the applicant, through the State, of approval or denial. Requests for time extensions beyond the Regional Director's authority are forwarded by the Regional Director to the Associate Director for his action.

(e) *Cost overruns.* During the execution of approved work under categorical grants, the applicant may find that overruns are occurring on the actual costs of certain projects, compared to the approved estimates on the Damage Survey Reports. Such cost overruns fall into two main categories:

(1) Overruns because of variations in unit prices and (2) overruns because of change in scope of eligible work. The applicant should report these situations to the Governor's Authorized Representative immediately so that appropriate actions can be taken to verify eligibility of the overruns. An interim inspection by a Federal inspector may be necessary. Upon verification of eligibility documented by amended Damage Survey Reports, a supplemental project application to cover the overrun may be submitted.

§ 205.117 Final inspections.

(a) For any categorical grant, flexible funding grant, or small project grant, the Regional Director or the Associate Director, may require such Federal or State inspections, not otherwise required by these regulations, as he/she deems necessary.

(b) The following requirements for Federal final inspection are applicable to categorical grants and to flexible funding grants:

(1) For any project of completed work for which the claimed amount of FEMA reimbursement exceeds \$10,000, a Federal final inspection is required.

(2) For any project of completed work for which the claimed amount of FEMA reimbursement does not exceed \$10,000, the Regional Director may accept a written certification by the applicant's Authorized Representative, describing the project and certifying the claimed actual costs in sufficient detail to permit a desk review by the Governor's Authorized Representative and by the Regional Director. The Regional Director will notify the State whether the applicant's certification was satisfactory. For those projects not adequately certified, the Regional Director shall require a State or Federal final inspection.

(c) Reference 44 CFR 205.113(b)(3)(vi), the Regional Director shall require a State or Federal final inspection of any project of work completed under a small project grant as he/she deems necessary.

(d) The Governor's Authorized Representative shall arrange for and schedule final inspections, and interim

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inspections, which he/she deems necessary, and those additional inspections required by the Regional Director. The Governor's Authorized Representative shall assure that all of these inspections are conducted and completed effectively and in a timely manner.

§ 205.118 Claims for reimbursement.

(a) *Submittal.* To receive reimbursement for funds expended under a categorical grant or flexible funding grant, the applicant shall submit a claim to the State within 60 days after the completion of approved work, including a listing of actual costs for each line item. All costs claimed shall be paid by the applicant prior to approval of final settlement by the Regional Director. Under a small project grant, the applicant shall submit a request for reimbursement with the project application. If the applicant completes all work approved for it under a categorical grant for an amount less than \$25,000, the Regional Director may, at his/her discretion, approve a change in funding to a small project grant, and reduce the amount originally approved to the amount of the actual cost of the approved work.

(b) *Audit.* (1) Reference 44 CFR 205.112(e), the Governor's Authorized Representative shall arrange for State audit to be made for each categorical or flexible funding grant as soon as possible after receiving the applicant's claim. Audit of small project grants is not normally required. Documentation must be available to auditors at the grantee's central office of record. The Regional Director or the Associate Director may request a Federal audit of any claim, regardless of amount or type of funding.

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

(3) *Federal audit.* The FEMA Inspector General and the General Accounting Office have audit responsibility. Thus, a Federal audit may be performed on any claim if deemed necessary by the FEMA Inspector General and/or the General Accounting Office.

(c) *Partial payments.* In any case where an applicant has completed part of the approved work, has received the maximum advance of funds available, and still lacks funds to satisfy all project-related obligations, the Regional Director may approve partial payments. The basis for approval of such payments are urgent financial need, satisfactory inspection reports, and audit of the applicant's records upon which the partial payment is based.

(d) *Review and approval—(1) State.* Following audit, the Governor's Authorized Representative reviews the claim and, based on the audit report and related documents, approves a certain amount on the claim to be submitted to the Regional Director for approval. The State shall submit the claim and the audit report to the Regional Director as soon as possible after the date that the applicant submitted the claim to the Governor's Authorized Representative.

(2) *Regional Director.* Following his/her review of the claim and audit report, the Regional Director may approve or disapprove it. An approved claim will then be processed for payment. If the Regional Director does not agree with the State audit recommendations, he/she may request a Federal audit. If he/she does not agree with the Federal audit recommendations and the matter cannot be resolved at the Regional level, the case is forwarded to the Associate Director for resolution. The Regional Director or the Associate Director may require additional Federal audits as he/she deems necessary.

§ 205.119 Federal funding.

(a) *Management of Federal funds.* The State shall properly account for all Federal funds made available to the State under these regulations as Federal funds in the accounts of the State. In each case, the State agency

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concerned shall provide such authenticated reports as the Associate Director or the Regional Director may require, covering the status and application of the funds, the liabilities and obligations on hand, and other pertinent information.

(b) *Release of Federal funds for State or local governments.* Requests for advance of funds or reimbursement that are approved by the Regional Director are forwarded to the FEMA National Office, where they are processed to the U.S. Treasury for payment.

(c) *Recovery of excess advances from State or local governments.* (1) A bill for collection will be issued to the State immediately upon verification that the applicant has received funds in excess of the amount approved by the Regional Director as final settlement of its claim. In the event that there is an appeal by the applicant pending, the bill for collection may not be issued until the appeal is settled by the Regional Director or the Associate Director. The States shall advise applicants that the bills for collection are due upon receipt and that any appeals of the bills must be filed with the Regional Director within 60 days, the time limit established in 44 CFR 205.120.

(2) If by the expiration of the period for appeals the Regional Director has not received payment for the full amount of the bill for collection, he/she shall notify the appropriate State official in writing for transmittal to the applicant that the amount owed is past due, and that the claim is being referred to the Claims Collection Officer for further action. This action may include offset against future claims for disaster relief from the applicant or the State.

(d) *Disposition of interest earned on advances for funds.* (1) From the time that the State disburses advances of Federal funds to local applicants or to applicant State agencies, any interest earned on those funds must be paid to the Federal Government.

(2) If an applicant incurs disaster-related obligations, discharges those obligations with its own funds, and uses the advanced funds to reimburse its own accounts, the applicant does not

have to remit any interest earned to the Federal Government.

(3) States do not have to remit interest earned on advanced funds that are held briefly pending disbursement for immediate program purposes, i.e., to advance to eligible applicants for their disaster-related expenses.

(e) *Return of overadvanced funds by other Federal agencies.* Other Federal agencies shall promptly return to FEMA any advances of funds which are excess to their requirements in carrying out assignments made to them by FEMA.

§ 205.120 Appeals.

(a) An applicant may request the Governor's Authorized Representative to submit an appeal to the Regional Director for reconsideration of any determinations that the Regional Director made related to Federal assistance for that applicant. The applicant's written request shall be made within 60 days of the date of the Regional Director's action that is being appealed and shall include such additional information as appropriate justification. However, in the event that the additional information is not immediately available, the applicant shall within the 60-day period notify the State in writing of its intention to appeal, and shall then follow up with the required documentation.

(b) The State shall forward such appeals within 30 days of receipt of the appeal from the applicant, together with the State's comments, recommendations, and any additional information it may have.

(c) Upon receipt of an appeal, the Regional Director shall review the material submitted and make such additional investigation as he/she deems appropriate. Following the review and investigation, the Regional Director shall notify the State, in writing, of his/her decision to grant or deny the appeal. If the decision is to grant the appeal, the Regional Director shall take such additional action as is necessary to implement his/her decision.

(d) If the Regional Director denies the appeal, the applicant may request the State to submit a second appeal to the Associate Director. Such appeal

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shall be made in writing through the Regional Director, and shall be submitted not later than 60 days after receipt of notice of the Regional Director's denial of the appeal. Action by the Associate Director is final.

(e) If an applicant requests the State to make an appeal to the Regional Director or to the Associate Director in accordance with this section and the State declines, or takes no action on the request, the applicant may make an appeal directly to the Regional Director. The appeal by the applicant shall be made in writing within 60 days after receipt from the State of the notice of determination by the Regional Director, or notification by the State, that it will not make an appeal.

(f) Based on his/her determination that such action is warranted, the Associate Director or the Regional Director may extend any of the time periods prescribed by this section.

§ 205.121 Direct Federal assistance.

(a) Neither eligible emergency work, nor eligible permanent work under the provisions of section 402 of the Act, may be performed by or under the direct supervision of a Federal agency except in certain circumstances. When in rare cases the State or local government lacks the capability to perform or to contract for the eligible work, the applicant may request that the work be accomplished by a Federal agency. However, it is not anticipated that mission assignments to other Federal agencies can very often be justified. Such assistance is subject to eligibility criteria for proposed work contained in Subpart E—Public Assistance—of these regulations. Details concerning reimbursement of other Federal agencies are contained in Subpart I.

(b) Requests by Applicants: (1) The applicant shall submit requests for direct Federal assistance through the Governor's Authorized Representative for the Regional Director's approval.

(2) Requests must be made within 10 days after a major disaster declaration, or an emergency declaration, unless that period is specifically extended or shortened by the Regional Director.

(3) Time limitation for completion of emergency work or debris removal by a Federal agency under a mission assignment is three months after President's declaration. The applicant or State must be prepared to take over any emergency work not completed by the Federal agency within the three month period.

(4) The request shall be in the form of a resolution by the governing body of an eligible applicant, and shall include its agreement to:

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

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

(5) The request shall be accompanied by:

(i) A statement of the reasons why the emergency work cannot be performed by the applicant, or by any other local government; and

(ii) Assurance by the applicant of compliance with Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (42 U.S.C. 2000d-2000d-4), and Section 311, Pub. L. 93-288.

(c) Request by Governor's Authorized Representative: (1) In those instances where the required resolution by each applicant cannot be obtained on a timely basis to meet immediate needs, the Governor's Authorized Representative may submit a State request for direct Federal assistance for the Regional Director's approval.

(2) The FEMA policy in providing direct Federal assistance in response to a State request is that the immediate requirements for such debris removal or emergency work must clearly exceed State and local capabilities for timely accomplishment and is available only for major disasters of unusual magnitude or severity. Whenever feasible, it is expected the responsible State or local government shall develop the necessary capabilities to perform any remaining eligible work within ten days after the Presidential declaration, or that each unable to do so shall submit an appropriate resolu-

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tion for continuation of direct Federal assistance. The Regional Director shall terminate direct Federal assistance in response to the State request on the tenth day after the Presidential declaration, except for any extension justified by an appropriate resolution from an applicant on a case-by-case basis. Whenever feasible, technical advice or assistance shall be provided to an applicant to eliminate any requirement for direct Federal assistance. It is also expected that the capabilities of the State or other local governments shall be fully committed before any direct Federal assistance is authorized.

(3) Such State requests must be submitted within two days after the date of declaration of a major disaster or emergency and shall have a time limitation which expires ten days after the date of declaration. During this period, the interested applicants shall submit an appropriate request through the Governor's Authorized Representative in accordance with paragraph (b) of this section. The Regional Director's approval must be obtained before the expiration of the tenth day after the declaration for the desired Federal assistance to continue.

(4) The Federal agency performing direct Federal assistance in response to a State request shall contact the applicant's authorized representative of each applicant designated specifically by the Regional Director in coordination with the Governor's Authorized Representative. Before any Federal assistance is provided, the applicant's authorized representative shall request the Federal agency to perform the desired work, confirming each verbal request in writing without delay. No direct Federal assistance shall be performed without such prior request.

(5) The State request shall include its agreement to:

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

(ii) Hold and save the United States free from damages due to the requested work, and indemnify the Federal

government against any claims arising from such work.

(6) The request shall be accompanied by:

(i) A statement of the reasons why the emergency work cannot be performed by a local government or by the State; and

(ii) Assurances by the State of compliance with Title VI of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241.

(7) Emergency work on debris removal by direct Federal assistance in response to such a State request shall be performed on publicly-owned property. Under exceptional circumstances when in the public interest, and based on written assurances of right-of-entry and indemnification provided by the State, the local government, or the owner, such direct Federal assistance may be performed on private property.

(d) Approval: (1) State. If the Governor's Authorized Representative concurs that the emergency work is necessary and cannot be accomplished by the applicant, by another local government, or by the State, he/she shall endorse the applicant's request for direct Federal assistance and forward it to the Regional Director, together with a statement of the reasons why the State cannot provide the requested assistance.

(2) Regional Director:

(i) If the Regional Director approves the request, he/she shall issue a mission assignment to the appropriate Federal agency. The assignment letter to the agency shall define the scope of eligible work. Prior to execution of work on any project, except under unusual circumstances approved by the Regional Director, the Federal agency shall submit a Damage Survey Report to the Regional Director for review and approval to establish the scope of eligible work and approved cost limitations. The Federal agency shall not exceed the limit on funding approved by the Regional Director without obtaining prior approval of supplemental funding.

(ii) If all or any part of the requested work falls within another Federal agency's statutory authorities and capabilities, the Regional Director shall not approve it. Instead, he/she shall

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refer the request to the other Federal agency for action.

(e) Project management: (1) Federal agency responsibilities. The performing Federal agency shall ensure that the work is performed and completed in accordance with the Regional Director's approved scope of work, costs, time limitations, and applicable standards. The performing Federal agency shall also keep the Regional Director, the Governor's Authorized Representative, and the applicant advised of work progress and other developments. The Federal agency is also responsible for obtaining any necessary permits or licenses; for compliance with applicable State and local laws or other requirements; and for compliance with these regulations and other applicable handbooks or guidance by the Regional Director. The Federal agency shall also provide a final inspection report signifying completion of the approved work which has been signed by the Federal agency's inspector and the applicant's authorized agent.

(2) Applicant responsibilities. The applicant shall assist the performing Federal agency in all support and local jurisdictional matters that a private owner would assume in a relationship to a performing contractor. These matters include securing local building permits and rights of entry, control of traffic and pedestrians in the interest of safety and public welfare, and compliance with local building ordinances. Refer also to 44 CFR 205.76(a)(7) regarding eligibility of costs of administrative expenses.

§ 205.122 Availability of materials.

For the purposes of this section, "construction materials" shall include building materials and materials required for repair or replacement of housing, public facilities, or normal farm and business facilities. The Regional Director may, at the request of the Governor of an affected State, provide for a survey of construction materials needed in the disaster affected area on an emergency basis for housing repair, replacement housing, public facilities repairs and replacement, farming operations, and business enterprises and may take appro-

priate action to assure the availability and the fair distribution of needed materials. Where possible, such action may include the voluntary allocation of such materials for a period of not more than 180 days after the major disaster. The Regional Director shall implement any allocation program to the extent possible by working with and through those companies that traditionally supply construction materials in the affected area.

Subpart I—Reimbursement of Other Federal Agencies

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148; and Delegation of Authority, 44 FR 44792.

SOURCE: 45 FR 26053, Apr. 17, 1980, unless otherwise noted.

§ 205.150 Purpose.

This subpart prescribes the procedures for obtaining or authorizing the provision of services or use of resources of other Federal agencies in providing assistance under the authorities of the Act. It is effective for assistance obtained or authorized in emergencies or major disasters declared after August 2, 1976. Further details of direct Federal assistance other than reimbursement are covered in Subpart H, § 205.121.

§ 205.151 Assistance from other Federal agencies.

(a) The Associate Director or Regional Director, in determining the nature and extent of assistance required to implement authorities under the Act, shall consider the types of assistance available from other Federal agencies. Either the Associate Director or the Regional Director may request or direct other Federal agencies to provide available assistance as necessary.

(b) All requests or directives to other Federal agencies shall be in writing, or shall be confirmed in writing if made orally, and shall contain a specific reference to the anticipated level of reimbursement.

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§ 205.152 Expenditures eligible for reimbursement.

(a) The Associate Director or the Regional Director may not approve reimbursement of costs incurred while performing work under an agency's own authority.

(b) The Associate Director or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

(1) Overtime, travel, and per diem of permanent Federal agency personnel.

(2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services requested by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Associate Director.

(3) Travel and per diem of Federal military personnel assigned solely to performance of services requested by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Associate Director.

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

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

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

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

§ 205.153 Procedures for reimbursement.

(a) Federal agencies may submit requests for reimbursement of amounts greater than \$1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures within 90 days after completion of the agency's work under each request or directive for assistance. Requests for reimbursement are made on

SF 1081, Voucher and Schedule of Withdrawals and Credits.

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

(c) Reimbursement requests shall cite the specific directive or request for assistance under which the work was performed, and the disaster identification number. Requests for reimbursement of costs incurred under more than one directive or request may not be combined for billing purposes.

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

(e) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

Subpart J—General Insurance Requirements

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44782).

SOURCE: 44 FR 71794, Dec. 11, 1979, unless otherwise noted.

§ 205.200 General.

(a) Section 314 of the Act, and the Flood Disaster Protection Act of 1973, Pub. L. 93-234, establish insurance requirements as a condition for approving certain disaster assistance under

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the Act. This subpart pertains to assistance under sections 402 and 419 of the Act. Specific requirements pertaining to flood insurance under Pub. L. 93-234, as amended, are contained in Subpart K of this regulation.

(b) Prior to approval of a Federal grant for the restoration of property, the applicant shall notify the Regional Director of any entitlement to insurance settlement or recovery for such property. The Regional Director shall reduce the grant by the actual amount of insurance proceeds received by the applicant. In the event that insurance recovery is contingent upon the amount of reimbursement under the Act, reimbursement shall be limited to eligible costs as determined by the Regional Director after deducting the maximum amount otherwise recoverable under and to the limit of the applicant's insurance policy.

§ 205.201 Definitions as used in this subpart.

(a) "Assistance" means any form of Federal grant under sections 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property as the result of a major disaster or emergency declaration and which property is not excluded pursuant to § 205.202.

(b) "Property" means any structure, vehicles, equipment, materials, or supplies.

§ 205.202 Exclusions.

The following categories of Federal disaster assistance are excluded from the requirements to obtain and maintain such insurance as is required by section 314 of the Act and by this subpart:

(a) Emergency assistance provided under section 305 or 306 of the Act.

(b) Assistance otherwise eligible under section 402 or 419 of the Act for any State-owned property that is covered by an adequate State policy of self-insurance approved by the Associate Director for Disaster Response and Recovery (the Associate Director).

(c) Assistance under section 402 or 419 of the Act for any property for which insurance is not reasonably available, adequate, and necessary, such as: Roads, streets, bridges, and

other highway facilities; traffic controls; parking meters; drainage channels and debris basins; dikes and levees; pumping stations; and utility distribution systems.

(d) Assistance for which flood insurance is required under Pub. L. 93-234, as implemented by 44 CFR Part 205, Subpart K.

§ 205.203 Applicability.

(a) The requirements of this subpart shall apply to all assistance pursuant to section 402 or 419 of the Act with respect to any major disaster or emergency declared by the President after May 22, 1974, unless excluded under § 205.202.

(b) The Regional Director may not approve any such assistance unless the applicant has provided assurances, acceptable to the Regional Director, that the applicant will obtain and maintain any insurance required under these regulations.

(c) The Regional Director may defer approval of otherwise eligible project applications for up to 6 months to permit the applicant to provide such assurances referred to in paragraph (b) of this section. The Associate Director may extend the time for submission of such assurances by the applicant.

(d) No applicant for assistance under sections 402 or 419 of the Act shall receive assistance for any property or part thereof for which it has previously received assistance under the Act unless the applicant obtained and maintained the insurance required under section 314 of the Act and these regulations with respect to such property. In cases where insurance was not maintained, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit facilities which receive assistance under section 402(b) of the Act. Private nonprofit organizations shall submit the necessary documentation and assurances required by this subpart through the appropriate applicant.

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(f) The Regional Director shall require flood insurance as the result of the flooding major disaster, when reasonably available, adequate, and necessary under section 314 of the Act for assistance even though the flood damaged building concerned is located outside the base floodplain.

§ 205.204 Type of insurance.

(a) Assurances by the applicant under this subpart to obtain reasonably available, adequate, and necessary insurance shall be required only for the type or types of hazard for which the major disaster was declared. The Regional Director shall not require greater types and extent of insurance than are certified to him/her as reasonable by the appropriate State Insurance Commissioner responsible for regulation of such insurance.

(b) The Regional Director shall make a determination as to the type and extent of insurance that is reasonable when he/she is unable to obtain a prompt certification by the State Insurance Commissioner in response to a formal written request.

§ 205.205 Extent of insurance.

Prior to approval of assistance under section 402 or 419 of the Act to replace, restore, repair, reconstruct, or construct any property for which insurance is required under this subpart, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain reasonably available, adequate, and necessary insurance to protect against future loss in an amount equal to the amount of the grant under section 402 or 419.

§ 205.206 Duration of insurance coverage.

The applicant shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or of the insured property, which is the lesser.

§ 205.207 Assurances for categorical grants.

Where insurance is required under this subpart, the applicant shall submit evidence of applicable insurance coverage or other related assur-

ances with the project application. The type and extent of such insurance coverage shall be subject to approval by the Regional Director.

§ 205.208 Assurances for flexible funding.

When applying for assistance under the provisions of sections 402(f) and 419 of the Act, the applicant shall provide assurances acceptable to the Regional Director that it will obtain and maintain such insurance as required by section 314 of the Act and the regulations in this subpart. As part of such assurance, the applicant shall agree to provide to the Regional Director a listing of insured property, including location, description, extent and duration of insurance coverage, name and address of the insurer, and applicable insurance policy numbers. The Regional Director, after a review of the listing and schedule required by Subpart H (Project Administration) and other reviews as he/she considers necessary shall, if appropriate, require the applicant to obtain additional insurance under the Act and these regulations.

§ 205.209 Self-insurance.

A state may elect to act as a self-insurer with respect to any or all of the facilities belonging to it. Such an election, if declared in writing at the time of accepting assistance under sections 402 or 419 of the Act or subsequently, and if accompanied by a plan for self-insurance which is satisfactory to the Associate Director, shall be considered as complying with subsection 314(a) of the Act. After approval as self-insurer by the Associate Director, no State shall receive assistance under such sections for any property or part thereof for which it has previously received assistance under the Act, to the extent that insurance for such property or part thereof would have been reasonably available.

Subpart K—Flood Insurance Requirements

AUTHORITY: Sec. 601, Disaster Relief Act of 1974, as amended, Pub. L. 93-288, 88 Stat. 163 (42 U.S.C. 5201); Executive Order 12148 (44 FR 43239); and Delegation of Authority (44 FR 44792).

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SOURCE: 45 FR 37440, June 3, 1980, unless otherwise noted.

§ 205.250 General.

(a) The Flood Disaster Protection Act of 1973, Pub. L. 93-234, as amended, imposes certain restrictions on approval of Federal financial assistance for acquisition or construction purposes for use in any area defined by the Director, FEMA, as an area having special flood hazards. This subpart implements Pub. L. 93-234 as amended, except as specified in paragraph (b) of this section.

(b) Specific flood insurance requirements pertaining to Temporary Housing Assistance and Individual and Family Grants are contained in new Subpart D, §§ 205.52 and 205.54, respectively. To the extent this subpart is inconsistent with those sections, the more specific regulations in those sections apply.

§ 205.251 Definitions.

As used in this subpart:

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

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

(c) "Federal financial assistance" means any loan or grant or other form of direct or indirect Federal financial assistance under the Act and these regulations which is not excluded under § 205.252.

(d) "Financial assistance for acquisition or construction purposes" means any form of Federal financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machines, equipment, fixtures, and furnishings contained or to be contained in them but shall exclude assistance pursuant to the Disaster

Relief Act of 1974 (other than assistance under such Act in connection with a flood).

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

§ 205.252 Exclusions.

(a) The following categories of Federal disaster assistance are excluded from the provisions of the Flood Disaster Protection Act of 1973:

(1) Federal financial assistance on any State-owned property that is already covered by an adequate State policy or self-insurance approved by the Director, Federal Emergency Management Agency.

(2) Federal financial assistance under Title II of the Act.

§ 205.253 Applicability.

(a) Federal financial assistance for acquisition or construction purposes.

(1) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards unless the community in which such area is situated is participating in the National Flood Insurance Program at the time of the approval. This prohibition applies only to communities which have been formally identified for at least one year as communities containing one or more areas having special flood hazards. The "time of approval" of financial assistance is the date on which the authorized FEMA official obligates Federal grant or loan funds. This subsection does not mandate a requirement for community participation in connection with damage resulting from a hazard other than flooding.

(2) FEMA shall not approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Director, FEMA, as an area having special flood hazards and in which the sale of flood insurance is available under the National Flood Insurance Program unless the building or mobile home and their contents to which the financial assistance relates are or will be covered by an adequate policy of in-

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surance. As in § 205.253(a)(1) of this part, this subsection does not mandate a requirement for an insurance purchase in connection with damage resulting from a hazard other than flooding.

(i) As a condition for receiving a grant under the Act, an adequate flood insurance policy for a project involving emergency or permanent work shall be:

(A) The Standard Flood Insurance Policy (44 CFR Part 61, Appendix A) or one which complies with the criteria for the "Acceptance of Private Flood Insurance To Meet Statutory Requirement (43 FR 7147, at "D"); and

(B) Purchased and maintained to cover the insurable building and any contents to which the grant relates during the anticipated useful life of the project, as determined by the Regional Director, in an amount equal to the lesser of the project cost (less estimated land cost, if any) or the maximum available limits of flood insurance coverage under the National Flood Insurance Act of 1968.

(ii) For purposes of this paragraph (a)(2), the term "project" shall mean the construction, acquisition, restoration or repair of a building or a part thereof together with the repair, restoration or replacement of any personal property to which the financial assistance relates.

(3) In the case of paragraph (a) (1) or (2) of this section, any building may become eligible for Federal financial assistance if the community concerned:

(i) Qualifies for and enters the NFIP within six months after the date of the Presidential declaration,

(ii) Obtains and maintains the necessary flood insurance, and

(iii) Provides FEMA with written evidence of that insurance.

(4) If the applicant replaces a building outside of the base floodplain, Federal financial assistance will not be denied for failure of the community to participate in the NFIP or to obtain/maintain flood insurance, unless required under Subpart J of these regulations by the Regional Director as a condition for disaster assistance under the Act.

(b) The Regional Director shall work closely with the Governor's Authorized Representative, and State and local governments, to ensure that the provisions of this subpart for special flood hazard areas are considered in the processing and approval of project applications. In addition, the Regional Director shall require compliance with the provisions of this subpart in issuing mission assignments for direct Federal assistance under Subpart H of these regulations whenever property subject to the provisions of the Flood Disaster Protection Act of 1973 is involved.

(c) For any State owned building not covered by an approved State policy or self-insurance, the Regional Director shall require proof of adequate flood insurance covering proposed disaster assistance eligible for reimbursement under the Act.

(d) In accordance with paragraphs (a) (1) and (2) of this section, the applicant shall make a commitment to continue flood insurance for the useful life of the project, as determined by the Regional Director. For those buildings on which the eligible applicant is delinquent on prior flood insurance commitments in previous disasters, the Regional Director shall suspend any future Federal financial assistance for acquisition or construction purposes until such delinquency is eliminated. In such cases, any assistance shall be reduced by the insurance settlement which would have been received had the required insurance coverage been maintained in force.

(e) When a State has been approved by the Director, FEMA, as a self-insurer prior to the declaration of a major disaster or an emergency, the Regional Director shall determine the amount of self-insurance applicable to any building damaged by a major disaster and shall deduct such self-insurance coverage from the Federal grant for disaster assistance work.

(f) In administering this section, the Regional Director shall utilize current information from the Federal Insurance Administration to identify States having a satisfactory program of self-insurance, the communities eligible for flood insurance under the regular or emergency programs, flood hazard

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boundary maps, and flood insurance rate maps.

Subpart L—[Reserved]**Subpart M—Hazard Mitigation**

AUTHORITY: Secs. 406 and 601, Pub. L. 93-288, 88 Stat. 143 (42 U.S.C. 5176 and 5201); Executive Order 12148; and Delegation of Authority (44 FR 44972).

SOURCE: 44 FR 64809, Nov. 8, 1979, unless otherwise noted.

§ 205.400 General.

(a) **Purpose.** The purpose of this subpart is to prescribe the actions and procedures for implementing Section 406, Pub. L. 93-288, as amended. Any conflicting provisions elsewhere in 44 CFR Part 205 are superseded by this subpart. It is also the purpose of this subpart to clarify the responsibilities for hazard mitigation of the various Federal agencies and State and local governments as the result of a major disaster or emergency declared by the President.

(b) This subpart covers actions, procedures, standards, and criteria for accomplishing optimum results in reduction, avoidance and mitigation of all types of future disasters. These regulations are intended for the use of Federal, State and local governments, as well as organizations and individuals administering or receiving Federal grant or loan assistance as the result of a major disaster or emergency. They are also intended to complement and reinforce implementation in other subparts of these regulations of: (1) The President's Executive Order 11988 on Floodplain Management and Executive Order 11990 on Protection of Wetlands; and (2) the National Environmental Policy Act, of 1969 Pub. L. 91-190. When a major disaster or emergency occurs, the hazard mitigation actions to cope with those hazards identified as the result of the major disaster or emergency shall receive priority.

§ 205.401 Definitions.

In this subpart reference is frequently made to such words as hazard reduction, avoidance, and mitigation; land use and construction regulations;

and disaster proofing. As used in this subpart:

(a) "Avoidance" means to eliminate a hazard through measures such as relocation or prohibition of construction within an area susceptible to risk or danger, or by other means.

(b) "Construction practices" means codes, standards, and specifications applicable to repairs, or to alterations or new construction of a facility or structure.

(c) "Disaster proofing" means those minimum alterations or modifications to damaged facilities that could be expected to prevent or substantially reduce future damages to the repaired or reconstructed facility, or to make it disaster resistant.

(d) "Hazard" means any natural source of danger or element of risk identified following a major disaster or emergency.

(e) "Land use regulations" include zoning for purposes compatible with prudent floodplain management and both preventive and corrective restrictions on construction, repairs, or alterations of facilities within specified areas. Preventive restrictions provide regulation of new land use, i.e., non-structural disaster control measures such as use of high hazard areas for parks, farms, and recreational areas. Corrective restrictions include:

- (1) Floodproofing;
- (2) Acquisition;
- (3) Insurance;
- (4) Removal of non-conforming uses.

(f) "Mitigation" means to alleviate by softening and making less severe the effects of a major disaster or emergency and of future disasters in the affected areas, including reduction or avoidance.

(g) "Reduction" means to diminish in strength and intensity or to restrict or lessen the size, amount and extent of damage resulting from the major disaster or emergency or to be expected as the result of future disasters.

§ 205.402 Implementing actions.

(a) The FEMA role under Section 406 of the Act is one of providing leadership, not through mandates, but through governments and assistance to them in their initiatives to develop

and maintain effective mitigation standards. FEMA must provide realistic and attainable mitigation options for their consideration and adoption. Ultimately, improved programs can only be developed when each party understands the benefits to be gained through hazard mitigation and is willing to work in a shared environment of cooperation and commitment.

(b) While the need to respond quickly to disasters and life-threatening conditions must remain paramount, FEMA shall assure that the ultimate benefits to be gained through effective hazard mitigation programs are not diminished and remain a primary objective.

(c) FEMA shall provide technical advice and assistance for hazard mitigation to local or State governments and to certain private nonprofit organizations eligible for grant assistance under section 402(b) of the Act. Such technical advice and assistance shall be supplementary to that available from any other State or Federal agencies under their existing programs. Technical advice may also be provided for water conservation measures in affected areas short of water as the result of the major disaster or emergency.

(d) FEMA shall encourage local or State governments to adopt safe land-use regulations and construction practices or standards. When such action is taken, after the declaration of a major disaster or emergency, the Associate Director may approve such regulations, practices or standards as applicable deviations as a condition for any Federal grants under Section 402 of the Act. When such action is not taken, the Associate Director may still prescribe appropriate standards as applicable to federally-assisted projects resulting from the major disaster or emergency being restored under Section 402 of the Act. The Associate Director may also prescribe such standards for prospective applicability to all similar repairs or new construction of facilities within the applicant's jurisdiction. In such instances, the applicant shall be notified in writing by the Regional Director through the State of these prescribed standards and that any future damages or destruction of

facilities due to failure to comply with such prescribed standards would not be eligible for FEMA grant assistance under section 402, except under unusual circumstances when approved in the public interest by the Associate Director.

(e) Local governments usually have the decision-making responsibility within their jurisdictions for hazard mitigation measures, including sound land-use regulations and safe construction practices. The State has the central role in resource management and in hazard mitigation throughout the State. Federal technical advice and assistance is supplementary in nature.

(f) FEMA recognizes the heavy administrative workloads of local and State governments in coping with major disasters or emergencies and, in initiating any hazard mitigation programs, it will be sensitive to these existing workloads. In developing any proposed implementation plan and procedures, FEMA's emphasis is to focus the efforts of all participants on achieving positive results in hazard mitigation. It encourages initiative by State and local governments within the context of their laws, regulations, and customs.

(g) For all major disasters and emergencies involving actions or affecting in floodplains or wetlands appropriate hazard mitigation measures shall be taken as required by FEMA's Floodplain Management regulations (44 CFR Part 9).

(h) Nonstructural disaster protection methods or measures shall be fully considered and emphasized where consistent with primary program purposes of the Act.

(i) As a condition for any grant for federally assisted projects under section 402 of the Act, the Associate Director has prescribed as a standard, floodproofing measures which the Regional Director determines are appropriate and practicable as disaster-proofing under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain.

(j) During hazard mitigation actions involving water resources under this subpart, the State shall be the focal point for water resource management.

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(k) As a condition for any grant or loan under the Act for municipal water supply or waste water treatment facilities or systems, appropriate water conservation requirements shall be included and any disincentives to water conservation shall be removed.

§ 205.403 Responsibilities.

(a) *General.* After a declaration of a major disaster or emergency coordinated effort of all participants is required to identify the significant hazards and appropriate mitigation measures to cope with those hazards.

(b) *FEMA.* The Regional Director shall include appropriate provisions for hazard mitigation under this subpart in the Federal/State Agreement. He/she shall coordinate with the Governor's Authorized Representative to provide for a joint Federal/State team to survey the disaster affected area soon after a major disaster or emergency declaration for these purposes:

(1) Identify significant hazards in the affected area, giving priority to disaster-related hazards;

(2) Evaluate the impacts of these hazards and measures which will mitigate these impacts; and

(3) Recommend appropriate hazard mitigation measures.

The Regional Director shall designate a FEMA staff member to serve as Hazard Mitigation Coordinator (HMC) on the FEMA/State survey team and to confer with local, State and Federal officials concerning these hazards and hazard mitigation measures. Based on these consultations by the FEMA HMC and the Regional Director, and on decisions by local or State agencies which may establish new or modified land use regulations or standards, the Regional Director may recommend that the Associate Director approve or prescribe appropriate standards. The Regional Director shall also designate a FEMA planner to serve on the FEMA/State planning team. Concurrently with the FEMA/State survey team activities, the FEMA planner shall coordinate with the State planner designated by the Governor's Authorized Representative in working with participating Federal, State, and local agencies, organizations or individuals in accomplishing hazard miti-

gation planning as required by the Regional Director in accordance with 44 CFR 205.403(e), 44 CFR 205.405, 44 CFR 205.410(b), and 44 CFR 205.411(c). The Regional Director may provide technical advice and assistance to local or State agencies for the purpose of accomplishing hazard mitigation activities under this subpart. He/she shall review State evidence of compliance with approved hazard mitigation activities and shall provide to the Associate Director an after-action report when all such hazard mitigation activities are completed or terminated. Because the Regional Director requires that each applicant take appropriate hazard mitigation measures as a condition for approval of a FEMA grant or loan, he/she shall follow up with the State to recover Federal funding whenever an applicant fails to satisfy any conditions upon which the approval of the grant was based. The Regional Director may arrange for other Federal agencies to participate in hazard mitigation activities under this subpart.

(c) *State.* The Governor's Authorized Representative is responsible for State performance of hazard mitigation activities under the Federal/State Agreement and this subpart. He/she shall designate a State Hazard Mitigation Coordinator (HMC) to serve on the FEMA/State survey team and a State planner to serve on the FEMA/State hazard mitigation planning team. The Governor's Authorized Representative shall arrange for State and local participation in FEMA/State surveys and FEMA/State planning in the affected areas of the State for the purposes stated above. The State HMC shall arrange for consultations on the findings and recommendations from the joint survey and shall follow up to assure that timely and adequate local and State hazard mitigation actions are taken. Whenever appropriate, he/she shall arrange for State funding or technical assistance to eligible applicants for the purposes of accomplishing State-approved hazard mitigation actions. He/she shall arrange for State inspection or audit to verify compliance with approved hazard mitigation measures. When these activities are completed in ac-

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cordance with the Federal/State Agreement, he/she shall submit a final report of compliance with hazard mitigation requirements by State and local governments to the Regional Director for review and acceptance. Similarly, the State planner shall work with the FEMA planner in accomplishing the tasks referenced in paragraph (b) of this section.

(d) *Local*. The applicant is responsible for local performance of hazard mitigation measures under the Federal/State Agreement and this subpart. Each applicant shall designate a local Hazard Mitigation Coordinator (HMC) to work with the FEMA/State survey team as required by the State HMC. Working with the FEMA/State survey team, the local HMC will assess the damage within the local jurisdiction. The local HMC shall arrange for local participation in consultations with FEMA/State survey teams about hazard mitigation actions under this subpart. The local HMC is responsible for informing local officials and interested citizens about significant survey team activities. He/she shall also collect any local comments on these matters and report them to the State HMC.

With any project application, each applicant shall submit adequate assurances that any required hazard mitigation measures have been taken or will be completed. The applicant, to the extent of its legal authority, is responsible for implementing and enforcing land use regulations and safe construction practices which are conditions agreed upon for FEMA grants or loans. The applicant shall provide evidence of compliance with conditions for any approved FEMA grants or loans as required by the Governor's Authorized Representative. The applicant's local Authorized Representative shall also arrange for the applicant's planner to work with the FEMA/State planning team in reviewing and updating existing hazard mitigation plans, or in developing new hazard mitigation plans as may be scheduled by the Governor's Authorized Representative and requested by the Regional Director.

(e) *Federal/State agreement*. When necessary to clarify responsibilities

under this subpart for a major disaster and emergency, clarification shall be provided by amendment to the Federal/State Agreement. The following is a typical paragraph:

**HAZARD MITIGATION CLAUSE ADDED TO
FEDERAL-STATE AGREEMENT**

The State agrees that, as a condition for any Federal loan or grant, the State or the applicant shall evaluate the natural hazards in the areas in which the proceeds of the grants or loans are to be used and shall make appropriate recommendations to mitigate such hazards for federally assisted projects. The State further agrees: (1) to follow up with applicants, within State capabilities, to assure that, as a condition for any grant or loan under the Act, appropriate hazard mitigation actions are taken; (2) to prepare and submit not later than 180 days after the declaration to the Regional Director for concurrence, hazard mitigation plan or plans for the designated areas, and (3) to review and update as necessary disaster-mitigation portions of the emergency plans.

The Regional Director agrees to make Federal technical advice and assistance available to support the planning efforts and actions.

§ 205.404 Surveys.

(a) *Damage assessments*. Prior to a declaration of a major disaster or emergency, local, State and Federal preliminary assessments of damage may identify major hazards and opportunities for hazard mitigation actions. This information will be transmitted to the FEMA/State survey team as indicated below. During the period immediately following a major disaster or emergency, each applicant is expected to use its resources and capabilities as necessary to perform emergency work, such as debris removal or emergency measures to save lives, or to protect public health and safety or to protect property. The identification of hazards by the damage assessment team and the performance of the emergency work may result in significant hazard mitigation. Damage Survey Reports (DSR) (see 44 CFR 205.114(d)) completed by Federal inspectors will also include identification of hazards and recommendations of mitigation measures to be incorporated in the repair work.

(b) *Survey activities.* After a declaration of a major disaster or emergency, the Governor's Authorized Representative shall schedule a briefing for State staff members about their participation in FEMA/State survey team activities.

The survey team shall be made up of the FEMA HMC and the State HMC, plus other Federal or State staff members or consultants. This FEMA/State survey team shall work with the appropriate local HMC. Utilizing the information from the preliminary damage assessments, the DSR's referred to above, and all other pertinent information readily available, the survey team shall visit the sites of significant damage to evaluate the hazards. This evaluation may include investigation of selected individual damaged facilities plus review of applicable land use regulations, construction standards, and other appropriate hazard mitigation measures. The Federal/State survey team shall work with the local HMC and other local officials as necessary during this evaluation. The FEMA HMC shall supply model regulations, suggested standards, and other pertinent references for use by the survey team. For each identified significant hazard the survey team shall include appropriate recommendations of hazard mitigation measures in its final report (see 44 CFR 205.411(c)).

§ 205.405 Hazard mitigation plans.

(a) *Plans.* For each hazard-prone area, the FEMA/State planning team shall review and evaluate existing local or State emergency plans for hazard mitigation. Particular attention shall be given to the adequacy of plans for warning and evacuation. In those cases where no such plans exist, this planning team shall report its findings and recommendations concerning specific needs to develop and maintain such plans. The Regional Director shall require the State to update existing State or local plans or to develop such new hazard mitigation plans as he/she deems necessary in consultation with the Governor's Authorized Representative. In determining whether to impose such a requirement on a local government, consider-

ation shall be given to the opportunities presented for effective hazard mitigation, the size and composition of the local government, the local government's authority to regulate land use and to require safe construction practices, and the local government's exercise of such authority. The Governor's Authorized Representative, or Regional Director, may provide technical advice and assistance to State agencies or local governments in developing new plans or updating existing plans to mitigate hazards identified as the result of the major disaster or emergency within the affected areas.

(b) *Objectives.* The identification of hazards following a major disaster or emergency and accomplishment of appropriate hazard mitigation measures are the short-term planning objectives to be required by the Federal/State Agreement. The Regional Director and the Governor's Authorized Representative shall focus with highest priority on these objectives in verifying compliance with the Agreement as a condition for Federal loans or grants.

(c) *Mapping.* The FEMA/State planning team shall verify the impact of the major disaster on disaster frequencies computed prior to the major disaster through contacts with agencies maintaining such records. This planning team shall also consider the advisability of redefining boundaries of high-hazard areas as the result of their findings and shall make recommendations to the Regional Director on any needs for new mapping or re-mapping of high hazard areas.

(d) *Schedules.* In its recommendations of appropriate hazard mitigation measures, the planning team shall suggest target dates and schedules for accomplishment of each recommended measure.

(e) Measures which relate only to specific construction projects shall be specified as conditions for approval of applicable FEMA grants or loans. Those hazard mitigation measures which require other actions by applicants for FEMA grants or loans shall be reported by the FEMA/State survey team to the Governor's Authorized Representative, for referral to the FEMA/State planning team or other appropriate action.

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§ 205.406 Hazard mitigation measures.

(a) *General.* Certain types of actions may be taken to achieve hazard mitigation including:

- (1) Avoidance,
- (2) Reduction, and
- (3) Adoption and enforcement of land use regulations and of safe construction practices.

(b) *Avoidance.* For siting new construction of facilities or structures, location outside of high hazard areas is the preferred solution. For each hazard identified following a major disaster or emergency, the survey team shall assess the feasibility of avoidance of high hazard areas in cases where new construction, alteration, or major repairs are involved in restoration of damaged or destroyed facilities. The survey team shall also make specific recommendations concerning land use regulations and rezoning to achieve the objectives of avoidance whenever appropriate.

(c) *Reduction.* Reduction of the effects of hazards on facilities and people may be achieved by reducing the area or level of the hazard itself or by reducing the impact of the hazard on individual facilities. Examples of the first are flood control projects such as dams, levees, floodwalls or channel improvements. In some situations, these may be the only practicable measures to protect facilities or structures already located in the floodplain. Reducing the impact on a facility may be accomplished by such measures as installing shearwalls or bracing in buildings or installing check valves in utility lines in earthquake-prone areas. In flood-prone areas, tie downs may be used for mobile homes, lower levels of building may be water-proofed, water damage resistant materials may be used in reconstruction, or such lower levels may be restricted to nonhazardous uses.

§ 205.407 Land use regulations.

(a) *Local zoning.* Regulation of land use within its jurisdiction is normally a function of local government. In some cases, the local government may have already adopted land use regulations or zoning prior to a major disaster or emergency. Modification or updating based on current maps and

model regulations may be necessary. Some re-mapping may frequently be required. In certain cases, the existing land use regulation may be adequate to cope with the identified hazards, if properly enforced. State, Federal, or private interests may propose model zoning regulations, but adoption and enforcement of such regulations remain with the responsible State or local government. Certain State or Federal restrictions may be locally adopted and enforced by mutual agreement, or as a condition for certain types of financial assistance. The survey team shall make its recommendations based on field observations and evaluation of hazards within the affected areas. Consultations with the applicant, the State HMC, and the FEMA HMC may then be necessary to identify the applicant's options for decisionmaking. The State or FEMA HMC shall provide encouragement, technical advice, and assistance to the applicant to adopt and enforce appropriate land use regulations. The FEMA/State planning team shall follow up on contacts with the State or local government if appropriate.

(b) *State land use regulations.* For State-owned properties outside of local jurisdictions, the responsible State agency adopts and enforces land use regulations. In some cases, these State regulations may serve as model regulations for local governments. The planning team may make recommendations on new State land use regulations for State lands and provide technical advice and assistance to the State for developing such regulations. The State may require local adoption of Statewide land use regulations as a condition for State aid, such as grants, loans, or technical assistance.

(c) *Federal land use regulations.* For federally owned lands outside of local or State jurisdictions, the responsible Federal agency adopts and enforces land use regulations which may serve as models for local or State regulations in like circumstances. The FEMA/State planning team may encourage the Federal agency to adopt land-use regulations currently used locally as being applicable to the Federal property. A Federal agency may require local or State governments to

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adopt and enforce certain hazard mitigation regulations as a condition for Federal assistance or participation in federally assisted programs. For example, the National Flood Insurance Program requires certain minimum floodplain management regulations for participation by State or local government. Executive Order 11988 also imposes additional constraints on Federal grants or loan assistance within the floodplains. After reviewing a project application in accordance with FEMA's Floodplain Management regulations (44 CFR Part 9), the Regional Director may determine that no practicable alternative to locating in the floodplain exists. The Regional Director then shall require appropriate measures to minimize harm to the facility, to other property and to the floodplain and to preserve and restore the natural and beneficial values of the floodplain. Non-structural uses of floodplains and wetlands, such as open space and parks, shall be encouraged whenever practicable. Coastal zone management plans impose similar requirements for local, State, and Federal floodplain management regulation. As model hazard mitigation regulations become available to cope with other types of major disasters or emergencies including earthquakes, windstorms, and fires, the survey team may recommend them as requirements for federally assisted projects, or for adoption and enforcement by applicants for Federal grant or loan assistance. Survey or planning teams shall make findings and recommendations as appropriate for development or updating of model hazard-mitigation regulations by various Federal agencies for mitigation of hazards identified following a major disaster or emergency. The FEMA planner may arrange for Federal technical advice and assistance to local or State governments in modifying model land use regulations to satisfy local requirements.

(d) *FEMA land use standards.* As the result of a major disaster or emergency, the Regional Director may determine that there is no practicable alternative to permitting approval of a grant or loan for an action within a high hazard area. For example, refer to 44 CFR Part 9 covering the eight-

step decisionmaking process for floodplain management. In those cases where a practicable alternative exists outside the base floodplain, the Regional Director shall decline to approve a FEMA grant or loan unless the facility or structure is relocated. The Regional Director may take similar action for other types of disasters, such as tornadoes or earthquakes, where a practicable alternative exists outside the high hazard area. Under the Act, the Associate Director may prescribe appropriate standards as applicable for FEMA assisted projects as the result of a major disaster or emergency, as discussed in 44 CFR 205.402(d). When the Regional Director determines that restoration of a damaged or destroyed facility in a hazard area is not a practicable alternative, he/she may decline to authorize FEMA disaster assistance to restore facilities at the original site, or within the hazard area where such facilities are subject to repetitive heavy damages or destruction. When an applicant decides to relocate facilities being restored under Section 402 of the Act outside of a high hazard area, purchase and development of the site is the applicant's responsibility. The Regional Director may approve Federal grant assistance for permanent restoration of eligible facilities erected on the new site: Provided, that the Regional Director determines that the Federal grant assistance for such project is practicable and in the public interest.

§ 205.408 Construction practices.

(a) *General.* In certain cases, permanent repairs, alterations, or new construction to predisaster design may not provide usable facilities or structures safe from identified hazards. Alternate actions available are relocation; restorative work to conform to updated safe construction practices; or no approval for Federal funding of the proposed work. For FEMA-assisted projects under the Act, the applicant's decision on standards for restorative work shall be subject to review and approval by the Governor's Authorized Representative and the Regional Director. In identifying hazards and in

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its damage evaluation, the survey team shall inventory existing construction practices or standards related to damaged or destroyed facilities and may recommend adoption and enforcement by each applicant of additional safe construction practices.

(b) *Local standards.* When a major disaster or emergency occurs, the FEMA/State survey team shall inventory and evaluate the standards already adopted by the applicants for the types of repairs, reconstruction, or restorative work for which Federal grant or loan assistance is being requested. During the field surveys this team, or the FEMA/State planning team may also have model State or Federal standards available for consideration by the applicants. Such standards for new construction may be different from those for repairs or alterations to existing facilities or structures. Federal or State agencies may provide technical advice and assistance to local governments, particularly in the form of model standards to be modified for local use. In discussions of hazard mitigation measures, the survey team or the planning team may develop appropriate recommendations to the applicant for updating existing standards, or for adopting new ones. As the result of the major disaster or emergency, each applicant has the responsibility for adopting or updating appropriate standards and for enforcing them. Such local action for non-federally funded projects shall be encouraged by the survey team and the planning team working together for a common purpose. An applicant may request State or FEMA technical advice and assistance in taking these actions. A new standard which the applicant submits for approval by the Associate Director shall include the scope of application of the standard; that is, whether the standard covers all public facilities or certain federally funded projects only. The standard shall also be accompanied by a description of local or State enforcement procedures.

(c) *State standards.* For State-owned buildings, structures, or facilities outside local jurisdictions, the responsible State agency adopts and enforces applicable standards. In some cases these

may serve as a model for similar action by local governments. As a condition for State approval of grant or loan assistance as the result of a major disaster or emergency, the Governor's Authorized Representative may recommend to the Regional Director that the Associate Director prescribe certain standards for the FEMA-assisted project for hazard mitigation purposes. The State HMC may also provide technical advice and assistance on hazard mitigation measures to applicants, private organizations, and individuals.

(d) *Federal standards.* (1) For federally owned buildings, structures, or facilities outside local or State jurisdictions, the responsible Federal agency adopts and enforces applicable Federal standards. These may serve as models for local or State adoption and enforcement in similar circumstances.

(2) The National Flood Insurance Program (NFIP) prescribes certain Federal standards for repairs, alterations, and new construction within floodplains as a condition for acceptance of a flood-prone community within that program. The Associate Director has prescribed as a standard, floodproofing measures which are appropriate as disaster proofing and practicable under E.O. 11988 for facilities within the 100-year floodplain or for critical facilities within the 500-year floodplain. For other types of disasters, similar standards for hazard mitigation may be available and appropriate for local, State and Federal use.

(3) The FEMA/State survey team, and the planning team, shall be aware of existing standards and shall recommend appropriate examples to applicants for consideration as hazard mitigation related to the major disaster or emergency.

(e) *FEMA standards.* Working with the State and applicants, through the survey team and the planning team, the Regional Directors shall encourage local adoption and enforcement on all projects, including non-federally assisted projects, of appropriate standards for hazard mitigation. When a local or State government takes such action, the Regional Director may recommend that the Associate Director

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approve such standards as applicable for FEMA-assisted projects, after appropriate consultations within FEMA, with local and State officials, and with appropriate elected officials of general purpose local governments. Based on these consultations and all available information, the Associate Director may approve such standards as deviations applicable to FEMA assisted projects. When the local or State government declines to adopt and to enforce them for non-FEMA-assisted projects, the Associate Director, after appropriate FEMA, State and local consultations, may prescribe appropriate standards which are applicable only to FEMA assisted projects. Refer also to 44 CFR 205.402(d). The Regional Director may then approve FEMA grant or loan assistance to enable the applicant to comply with them on FEMA assisted projects. The Regional Director may suspend or refuse to approve any project application until he/she is satisfied that the approved work will result in a facility or structure safe and usable for the pre-disaster function, or for alternate functions proposed as flexible funding by the applicant in accordance with these regulations. (See 44 CFR 205 Subpart H for an explanation of funding options.)

• § 205.409 Consultations.

(a) *General.* It is the intent of these regulations to provide opportunity for State and local officials and interested individuals to participate in the hazard mitigation process. At various points in the process, consultations and meetings with the FEMA/State survey team or planning team will provide input from these sources as detailed in the following paragraphs.

(b) *Survey team.* Members of the survey team shall make frequent contacts and have consultations with various applicants until the field surveys are completed and appropriate hazard mitigation measures are recommended. The State HMC is responsible under the Federal/State Agreement to arrange for appropriate consultations and notices to inform the public on those decisionmaking processes involved in the work of the survey team. An applicant or the FEMA HMC may

request such arrangements when desired.

(c) *Planning team.* Similarly, members of the FEMA/State planning team, in coordination with the survey team, shall make contacts and have consultations with various applicants or their planners as the planning team may require to accomplish its assigned tasks.

(d) *Meetings.* After the declaration of a major disaster or emergency, the Governor's Authorized Representative, in coordination with the Regional Director, schedules one or more meetings with local and State officials representing potential applicants for Federal assistance. These are generally known as "Applicant's Briefings". At these meetings FEMA and State staff members brief these local and State officials on FEMA policies and procedures for Federal grant or loan assistance under the Act. The Governor's Authorized Representative may arrange for the survey team and the planning team to participate in these briefings when desirable. The FEMA/State survey team and the planning team will normally schedule followup meetings later to discuss hazard mitigation measures with State and local officials. When necessary under FEMA's regulations pertaining to floodplain management and environmental review (44 CFR Parts 9 and 10) early public notice may be given of pending Federal actions. Based on the responses to such public notice, or when otherwise appropriate, the Regional Director may request the Governor's Authorized Representative to schedule public hearings for purposes of consultation with interested parties on hazard mitigation measures or problems.

(e) *Project Management.* Normal FEMA procedures for damage survey reports, project applications, final inspections, audits, and final payments require local, State, and Federal contacts and coordination. Appeal procedures provide for further reviews and consultations of all interested parties including the Associate Director and his/her staff. These procedures provide documentation to support the hazard mitigation measures taken under section 406 of the Act.

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§ 205.410 Compliance.

(a) *Federal/State Agreement.* Requirements for evidence of compliance may vary for each major disaster or emergency depending on its nature, severity, and magnitude as well as on variations in the resources, capabilities, organization, and staffing of the local and State governments. Any specific requirement for State evidence of compliance with hazard mitigation measures may be spelled out in the Federal/State Agreement.

(b) *Plans.* Review and acceptance of hazard mitigation plans submitted by the applicant or by the State in accordance with the Federal/State Agreement provides the Governor's Authorized Representative in coordination with the Regional Director opportunities to schedule spot inspections, audits, and follow-up consultations. Through these activities, compliance with hazard mitigation objectives, schedules, and commitments may be verified.

(c) *Project Administration.* As a condition for approval of a project application, and subsequently for approval of a voucher for final payment, the Governor's Authorized Representative and the Regional Director shall require documentation of required hazard mitigation measures, including compliance with applicable land use regulations or construction standards. In making Final Inspection Reports, Federal and State inspectors shall be specifically asked to verify compliance by the applicant with approved hazard mitigation standards. Similarly, auditors shall be required to verify such compliance in their audit reports.

(d) *Reporting.* The Regional Director may specify in the Federal/State Agreement that the State provide reports of compliance with approved hazard mitigation plans or actions. The Governor's Authorized Representative may also require such progress reports from each applicant or he/she may submit one comprehensive report when scheduled. Prior to termination of the Federal/State Agreement, the Governor's Authorized Representative shall submit a final report of compliance with hazard mitigation requirements by State and local

governments to the Regional Director for review and acceptance.

§ 205.411 Evaluation.

(a) *Critiques.* If requested by the Regional Director, the Governor's Authorized Representative shall arrange for a special critique of hazard mitigation plans and actions as the result of the major disaster or emergency. Each applicant shall be notified of the critique and may be invited to participate. As an alternative, a critique of hazard mitigation plans and actions may be scheduled to be covered at the FEMA/State critique covering all disaster assistance activities as the result of the major disaster or emergency.

(b) *Final survey team report.* Prior to terminating the survey team activities, the FEMA HMC and State HMC shall prepare a joint report of their activities and recommendations to the Governor's Authorized Representative and to the Regional Director.

(c) *Final planning team report.* Upon completion of its assigned mission, as discussed in 44 CFR 205.405, the FEMA/State planning team shall make a final report of its activities, findings and recommendations to the Regional Director through the Governor's Authorized Representative. This final report shall specifically identify any remaining planning requirements for hazard mitigation as the result of the major disaster or emergency requiring State or FEMA followup.

(d) *Follow-up actions.* The Regional Director shall review the reports from the survey team and the planning team plus the report of compliance from the Governor's Authorized Representative. The Regional Director's report to the Associate Director shall focus on the positive results achieved through hazard mitigation plans and actions as the result of the major disaster or emergency. He/She also shall provide in the report specific findings and recommendations for Federal follow-up action which should be taken after termination of the Federal/State Agreement to provide mitigation of such hazards as the result of future disasters. The Associate Director may then arrange for appropriate

373 *Federal action as the result of such such recommendations.*

2. Emergency Relief for Federal-Aid Roads, 23 C.F.R. § § 668.101 to 668.113
(Pursuant to 23 U.S.C.A. § 125.)

**PART 668—EMERGENCY RELIEF
PROGRAM**

**Subpart A—Procedures for Federal-Aid
Highways**

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**Subpart B—Procedures for Federal Agencies
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§ 668.101

Title 23—Highways

Subpart A—Procedures for Federal-Aid Highways

AUTHORITY: 23 U.S.C. 101, 120(f), 125, and 315; 42 U.S.C. 5155; 49 CFR 1.48(b).

SOURCE: 43 FR 59483, Dec. 21, 1978, unless otherwise noted.

§ 668.101 Purpose.

This regulation establishes policy and provides program guidance for the administration of emergency funds for the repair or reconstruction of Federal-aid highways, which are found to have suffered serious damage by natural disasters over a wide area or catastrophic failures. Guidance for application by Federal agencies for reconstruction of Federal roads is contained in 23 CFR Part 668, Subpart B.

§ 668.103 Definitions.

In addition to those contained in 23 U.S.C. 101(a), the following definitions shall apply as used in this regulation:

(a) *"Applicant"*. The State highway agency is the applicant for Federal assistance under 23 U.S.C. 125 for State highways and local roads and streets which are a part of the Federal-aid highway system.

(b) *"Catastrophic failure"*. The sudden failure of a major element or segment of the highway system which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.

(c) *"Emergency repairs"*. Those repairs including temporary traffic operations undertaken during or immediately following the disaster occurrence for the purpose of:

- (1) Minimizing the extent of the damage;
- (2) Protecting remaining facilities; or
- (3) Restoring essential travel.

(d) *"Federal roads"*. Forest highways, forest development roads and trails, park roads and trails, parkways, public lands highways, public lands development roads and trails, and Indian reservation roads.

(e) *"Natural disaster"*. An unusual natural occurrence, such as a flood, hurricane, severe storm, tidal wave,

earthquake, or landslide which causes serious damage.

(f) *"Proclamation"*. A declaration of emergency by the Governor of the affected State.

§ 668.105 Policy.

(a) The emergency relief program is intended to aid States and their political subdivisions to pay unusually heavy expenses resulting from a natural disaster over a wide area or catastrophic failure. Emergency funds are not intended to supplant other funds for correction of preexisting, nondisaster related deficiencies. The expenditures of these funds for emergency repair shall be in such a manner so as to reduce, to the largest extent feasible, the cost of permanent restoration work.

(b) The availability of emergency funds to repair or restore damaged highways resulting from a natural disaster shall be based on the combination of the extraordinary character of the natural disturbance and the wide area of impact. Storms of unusual intensity occurring over a small area will not meet the above conditions.

(c) Diligent efforts shall be made to recover repair costs from the legally responsible parties to reduce the project costs where catastrophic damages are caused by ships, barge tows, highway vehicles, vehicles with illegal loads, and similar improperly controlled objects or events.

(d) Emergency funds shall not duplicate assistance under another Federal program or compensation from insurance or any other source. Partial compensation for a loss by other sources will not preclude emergency fund assistance for the part of such loss not compensated otherwise.

(e) The processing of emergency relief requests shall be given prompt attention and shall be given priority over nonemergency work.

(f) Emergency relief projects shall be promptly constructed. Any project that has not advanced to the construction obligation stage by the end of the second fiscal year following the year in which the disaster occurred will not be advanced unless suitable justification to warrant retention is furnished

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to the Federal Highway Administration (FHWA).

(g) Permanent repair and reconstruction work shall be done by the contract method where feasible. It is in the public interest to perform emergency repairs either by force account or by the contract method.

§ 668.107 Federal share payable.

(a) The Federal share payable for repair or reconstruction of Federal roads is 100 percent of the cost.

(b) The Federal share payable for repair or reconstruction of highways on the Federal-aid system, including the Interstate System, shall ordinarily not exceed 75 percent of the cost thereof, or the appropriate sliding scale rate in Clause (A) of 23 U.S.C. 120(a) for Public Lands States. When special circumstances warrant, the Federal Highway Administrator may determine it to be in the public interest to increase the Federal share. State highway agency requests for an increase over the normal pro rata share must include information to demonstrate the inability of the State and local political units to bear the usual non-Federal share of highway repairs. A determination of public interest will be based largely on the effort expended by the State and local agencies to meet the total emergency.

§ 668.109 Eligibility.

(a) The eligibility of all work is contingent upon approval by the Federal Highway Administrator of an application for emergency funds and inclusion of the work in an approved program of projects.

(1) Prior FHWA approval or authorization is not required for emergency repairs and preliminary engineering (PE).

(2) Permanent repairs or restoration must have prior FHWA program approval and authorization, unless done as part of the emergency repairs.

(b) Emergency funds may participate in:

(1) Repair to or reconstruction of seriously damaged highway elements within the right-of-way (ROW) limits, including necessary clearance of debris and other deposits in drainage courses.

(2) Restoration of stream channels outside the highway ROW when:

(i) The public highway agency has responsibility for the maintenance and proper operation of the stream channel section; and

(ii) The work is necessary for satisfactory operation of the highway system involved.

(3) Actual PE and construction engineering costs on approved projects.

(4) Emergency repairs.

(5) Temporary operations, including emergency traffic services such as flagging traffic through inundated sections of highways, undertaken by the applicant during or immediately following the disaster.

(6) Betterments, such as relocation, replacement, upgrading or other added features not existing prior to the disaster, only where clearly economically justified to prevent future recurring damage. Economic justification must weigh the cost of the betterment against the risk of eligible recurring damage and the cost of future repair.

(c) Replacement highway facilities are appropriate when it is not technically and economically feasible to repair or restore a damaged element to its predisaster condition and are limited in emergency relief reimbursement to the cost of a new facility to current design standards of comparable capacity and character to the destroyed facility. With respect to a bridge, a comparable facility is one which meets current geometric and construction standards for the type and volume of traffic it will carry during its design life.

(d) Emergency funds may participate to the extent of eligible repair costs when proposed projects contain betterments or other work not eligible for emergency funds.

§ 668.111 Application procedures.

(a) *Notification.* As soon as possible after occurrence of the disaster, the applicant shall notify the FHWA Division Administrator of its plans to apply for emergency funds. The notification may be either a tentative notice of intent to apply or an application for emergency funds.

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(b) *Application.* Before funds can be made available, an application for emergency relief must be made to, and approved by, FHWA. Applications shall be submitted to the FHWA Division Administrator. The application shall include:

(1) A copy of the Governor's proclamation or request for a Presidential proclamation (neither is required where Federal roads only are involved).

(2) Information on the natural disaster or catastrophic failure including a description of:

- (i) The affected area;
- (ii) Types of damage to highways for which assistance is requested; and
- (iii) Preliminary estimate of the total cost of repairs.

(3) When appropriate, the State's request for an increase in the Federal share of funding of eligible costs with the supporting data as provided in paragraph (b) of § 668.107.

(c) *Approval of Application.* The Federal Highway Administrator's finding of eligibility under 23 U.S.C. 125 shall constitute approval of the application.

§ 668.113 Program procedures.

(a) Immediately after approval of an application, the FHWA Division Administrator will notify the applicant to proceed with preparation of a program of projects. The program should be submitted to the FHWA Division Administrator within 3 months of receipt of this notification. Program data should be kept to a minimum, but sufficient to identify the approved disaster or catastrophe and to permit a determination of the eligibility and propriety of proposed work.

(b) Project procedures.

(1) Projects shall be processed in accordance with regular Federal-aid procedures except as modified herein or approved Certification Acceptance procedures where applicable.

(2) Simplified procedures, including abbreviated plans should be used where appropriate.

(3) The FHWA may approve a waiver of the advertising requirement if:

- (i) Such procedures are authorized by State or local law; and

- (ii) Bids are solicited from a reasonable number of contractors or material supply companies.

~~Subpart B—Procedures for Federal Agencies for Federal Roads~~

~~AUTHORITY: 23 U.S.C. 120(f), 125, and 315; 41 U.S.C. 252; 42 U.S.C. 5155; 49 CFR 1.48(b).~~

~~SOURCE: 43 FR 59485, Dec. 21, 1978, unless otherwise noted.~~

~~§ 668.201 Purpose.~~

~~To establish policy, procedures, and program guidance for the administration of emergency relief to Federal agencies for the repair or reconstruction of Federal roads which are found to have suffered serious damage by a natural disaster over a wide area or by catastrophic failure.~~

~~§ 668.203 Definitions.~~

~~(a) "Applicant". Any Federal agency which submits an application for emergency relief and which has authority to repair or reconstruct Federal roads.~~

~~(b) "Betterments". Added protective features, such as, the relocation or rebuilding of roadways at a higher elevation or the extension, replacement or raising of bridges, and added facilities not existing prior to the natural disaster or catastrophic failure such as additional lanes, upgraded surfacing, or structures.~~

~~(c) "Catastrophic failure". The sudden failure of a major element or segment of a Federal road which is not primarily attributable to gradual and progressive deterioration or lack of proper maintenance. The closure of a facility because of imminent danger of collapse is not in itself a sudden failure.~~

~~(d) "Emergency repairs". Those repairs, including necessary preliminary engineering (PE), construction engineering (CE), and temporary traffic operations, undertaken during or immediately after a natural disaster or catastrophic failure (1) to restore essential travel, (2) to protect remaining facilities, or (3) to minimize the extent of damage.~~

3. Disaster Assistance for Crisis Counseling and Training: 42 C.F.R. 5 5
38.1 to 38.9 (Pursuant to Section 413 of the Disaster Relief Act).

§ 38.1

of deceased miner) do hereby authorize the performance of an autopsy (-----) (Limitation, if any, on autopsy) on said deceased. I understand that the report and certain tissues as necessary will be released to the United States Public Health Service and to ----- (Name of Physician securing autopsy)

I understand that any claims in regard to the deceased for which I may sign a general release of medical information will result in the release of the information from the Public Health Service. I further understand that I shall not make any payment for the autopsy.

Occupational and Medical History

1. Date of Birth of Deceased -----
(Month, Day, Year)

2. Social Security Number of Deceased -----

3. Date and Place of Death -----
(Month, Day, Year) ----- (City,
County, State).

4. Place of Last Mining Employment:
Name of Mine -----
Name of Mining Company -----
Mine Address -----

5. Last Job Title at Mine of Last Employment -----
(e.g., Continuous Miner Operator, motor-
man, foreman, etc.)

6. Job Title of Principal Mining Occupa-
tion (that job to which miner devoted the
most number of years) -----
(e.g., Same as above)

7. Smoking History of Miner:
(a) Did he ever smoke cigarettes? Yes -----
No -----
(b) If yes, for how many years? -----
Years.

(c) If yes, how many cigarettes per day did
he smoke on the average? -----
(Number of)
Cigarettes per day.

(d) Did he smoke cigarettes up until the
time of his death? Yes ----- No -----

(e) If no to (d), for how long before he
died had he not been smoking cigarettes?

8. Total Years in Surface and Under-
ground Employment in Coal Mining, by
State (If known) -----, (Years) -----
(State).

9. Total Years in Underground Coal
Mining Employment, by State (If known)
-----, (Years) ----- (State).

(Signature)

(Address)

(Date)

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PART 38—DISASTER ASSISTANCE
FOR CRISIS COUNSELING AND
TRAINING

Sec.

- 38.1 Purpose; coordination.
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38.6 Nondiscrimination.
38.7 Nonliability.
38.8 Criminal and civil penalties.
38.9 Federal audits.

Authority: Sec. 413, Pub. L. 93-288, The
Disaster Relief Act of 1974, 88 Stat. 157, 42
U.S.C. 5183, EO 11795, 39 FR 25939, as
amended by EO 11910, 41 FR 15681.

Source: 41 FR 52052, Nov. 26, 1976, unless
otherwise noted.

§ 38.1 Purpose; coordination.

(a) *Purpose.* This part establishes standards and procedures for the implementation of Section 413 of Pub. L. 93-288, the Disaster Relief Act of 1974 (42 U.S.C. 5183) which authorizes the provision, either directly or through financial assistance to State or local agencies or private mental health organizations, of:

(1) Professional counseling services to victims of a major disaster in order to relieve mental health problems caused or aggravated by such a major disaster or its aftermath; and

(2) Training of disaster workers to provide or assist in providing those professional counseling services.

(b) *Coordination.* The Secretary, acting through the National Institute of Mental Health, will, as provided in 24 CFR 2205.51, carry out section 413 of the Act and this part in coordination with and under the general policy guidance of, the Administrator of the Federal Disaster Assistance Administration. Contracts and grants awarded under this part are subject to all applicable provisions of the Act and the implementing regulations promulgated by the Administrator (24 CFR Part 2205).

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§ 38.2 Definitions.

All terms not defined herein shall have the same meaning as given them in the Act. As used in this part:

(a) "Act" means the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.).

(b) "Administrator" means the Administrator, Federal Disaster Assistance Administration (FDAA), Department of Housing and Urban Development, and any other person to whom he delegates the authority.

(c) "Contractor" means any public agency or private mental health organization which, pursuant to this part, contracts with the Secretary to provide professional mental health crisis counseling services or to provide mental health training for disaster workers.

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

(e) "Disaster workers" means mental health specialists such as psychiatrists, psychologists, psychiatric nurses, social workers, or qualified agents thereof.

(f) "Federal Coordinating Officer" means the person appointed by the Administrator to coordinate Federal assistance in a major disaster.

(g) "Governor" means the chief executive of a State.

(h) "Grantee" means any public agency or private nonprofit mental health organization which, pursuant to this part, is awarded a grant for the purpose of providing professional mental health crisis counseling services or mental health training for disaster workers.

(i) "Major disaster" means any hurricane, tornado, storm, flood, high-water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under

the Act above and beyond emergency services by the Federal Government, to supplement the efforts and available resources of the States, local governments, and disaster relief organizations, in alleviating the damage, loss, hardship, or suffering caused thereby.

(j) "Regional Director" means a director of a regional office of the Federal Disaster Assistance Administration (FDAA).

(k) "Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

(l) "State" means any of the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, or the Trust Territory of the Pacific Islands.

(m) "State Coordinating Officer" means the person appointed by the Governor to act in cooperation with the appointed Federal Coordinating Officer.

(n) "Training" means the specific instruction which may be required to enable disaster workers to provide professional mental health crisis counseling to victims of a major disaster or its aftermath.

§ 38.3 Assistance: procedures, limitations.

(a) *Application.* In order to obtain assistance under this part, the Governor or his State Coordinating Officer must, not later than 60 days following a major disaster declaration by the President, file with the appropriate Regional Director a request which includes:

(1) An estimate of the number of disaster victims who may need professional mental health crisis counseling services and of the number of disaster workers who may need training in the provision of such services;

(2) Identification of the geographical areas in which the need exists;

(3) An estimate of the period during which assistance under this part will be required and of the total funds which will be required to provide such assistance;

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(4) A description of the types of mental health problems caused or aggravated by the major disaster or its aftermath; and

(5) Identification of the State and local agencies and private mental health organizations capable of providing professional mental health crisis counseling to disaster victims or training of disaster workers.

(b) *Review, approval.* The Secretary, upon notification by the Administrator of a State request for assistance under this part, will conduct a review to determine the extent to which such assistance is needed to supplement assistance programs provided by State and local governments and private organizations and, on the basis of that review, prepare and submit a recommendation and report for consideration by the Administrator. Upon approval by the Administrator and his advancement of funds for carrying out the approved assistance, the Secretary may, within the limits of the funds advanced, provide the approved services either directly or through a grant or contract.

(c) *Eligibility for services.* (1) In order to be eligible for the professional mental health crisis counseling services available under this part an individual must:

(i) Have been located within the designated major disaster area or have been a resident of such area at the time of the major disaster or its aftermath; and

(ii) Have a mental health problem which was caused or aggravated by the major disaster or its aftermath.

(2) Disaster workers who are available on short notice to provide professional mental health crisis counseling services in a major disaster area are eligible for training under this part.

(d) *Time limitation.* Contracts and grants awarded under this part will not continue beyond 180 days after the first day services are provided pursuant to such contracts and grants, except that upon the recommendation of the Secretary (1) the Regional Director may extend the 180 day period for up to 30 days or (2) the Administrator may extend the 180 day period for more than 30 days.

§ 38.4 Contracts.

(a) *Eligibility.* Public agencies and private mental health organizations which are determined by the Secretary to be capable of providing the professional mental health crisis counseling services or mental health training of disaster workers needed as a result of a major disaster are eligible for the award of a contract under this part.

(b) *Use of local agencies.* Preference will be given to the extent feasible and practicable, to those agencies and organizations which are located or do business primarily in the area affected by the major disaster.

(c) *General Requirements.* Contracts under this part shall be entered into and carried out in accordance with the provisions of Chapters 1 and 3 of Title 41 of the Code of Federal Regulations and all other applicable laws and regulations.

(d) *Payments.* The Secretary shall from time to time make payments to the contractor of all or a portion of the contract award, either by way of reimbursement for expenses incurred or in advance for expenses to be incurred, to the extent he determines such payments are necessary to promote prompt initiation and advancement of the services to be provided under the contract. All payments not expended by the contractor within the period of the contract shall be returned to the Secretary.

(e) *Reports.* Contractors shall submit the following reports to the Secretary:

(1) Progress reports, to be submitted at the end of the first 30 days of the contract period and every 30 days thereafter;

(2) A final report to be submitted within 60 days of the date upon which the contract terminates; and

(3) Such additional reports as the Secretary may prescribe including those which may be required to enable the Federal Coordinating Officer to carry out his functions.

§ 38.5 Grant assistance.

(a) *Eligibility.* Public agencies and private nonprofit mental health organizations which are determined by the Secretary to be capable of providing

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the professional mental health crisis counseling services or mental health training of disaster workers needed as a result of a major disaster are eligible for a grant award under this part.

(b) *Application.* The application shall contain:

(1) A proposed plan for the provision of the services for which grant assistance is requested;

(2) A proposed budget for the expenditure of the requested grant funds; and

(3) Such other pertinent information and assurances as the Secretary may require.

(c) *Grant awards.* (1) Preference will be given, to the extent feasible and practicable, to those public and private nonprofit agencies and organizations which are located or do business primarily in the area affected by the major disaster.

(2) Within the limits of the funds advanced by the Administrator, the amount of any grant award shall be determined on the basis of the Secretary's estimate of the sum necessary to carry out the grant purpose.

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

(d) *Other HHS regulations that apply.* Several other regulations apply to grants under this part. These include but are not limited to:

45 CFR Part 16—HHS grant appeals procedures

42 CFR Part 50, Subpart D—PHS grant appeals procedures

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures (indirect cost rates and other cost allocations)

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services—Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80

45 CFR Part 84—Nondiscrimination on the basis of handicap in federally assisted programs

45 CFR Part 86—Nondiscrimination on the basis of sex in federally assisted programs

45 CFR Part 91—Nondiscrimination on the basis of age in federally assisted programs

(e) *Expenditure of grant funds.* Any funds granted pursuant to this part shall be expended solely for the purposes for which the funds were granted in accordance with the approved application and budget, the regulations of this part, the terms and the conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(f) *Reports.* In exceptional circumstances, a grantee may be required to submit special progress reports, in addition to those otherwise required, relating to the conduct and results of the approved grant.

[41 FR 52052, Nov. 26, 1976, as amended at 45 FR 57396, Aug. 28, 1980]

§ 38.6 Nondiscrimination.

Attention is called to the requirements of 24 CFR 2205.13 relating to nondiscrimination on the grounds of race, religion, sex, color, age, economic status, or national origin in the provision of disaster assistance.

§ 38.7 Nonliability.

Attention is called to section 308 of the Act (42 U.S.C. 5148) which provides that the Federal Government shall not be liable for any claim based upon the exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Act.

§ 38.8 Criminal and civil penalties.

Attention is called to section 317 of the Act (42 U.S.C. 5157) which provides:

(a) Any individual who fraudulently or willfully misstates any fact in connection with a request for assistance under this Act shall be fined not more than \$10,000 or imprisoned for not more than one year or both for each violation.

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

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(c) Whoever knowingly misapplies the proceeds of a loan or other cash benefit obtained under any section of this Act shall be subject to a fine in an amount equal to one and one half times the original principal amount of the loan or cash benefit.

§ 38.9 Federal audits.

The Secretary, the Administrator, and the Comptroller General of the

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United States, or their duly authorized representatives shall have access to any books, documents, papers, and records that pertain to Federal funds, equipment, and supplies received under this part for the purpose of audit and examination.

Appendix III: Glossary of Terms Related to Federal Disaster Assistance Programs

Executive Order 11988 - Floodplain Management - E.O. 11988, issued May 24, 1977, established a national policy of avoiding the adverse impacts of occupancy and modification of floodplains and avoiding federal support of floodplain development. The E.O. permits federal support for development of floodplains only where location in the floodplain is the only practicable alternative and rigorous mitigation measures have been adopted.

Damage Survey Reports - DSRs - Damage Survey Reports document the extent of damages to different facilities, identify needed and eligible repairs, and assess the costs of repairing or rebuilding them. They are prepared by a Damage Assessment Team consisting of federal, state, and local authorities and submitted to FEMA and the appropriate state emergency management agency. The DSR is the basis for FEMA's approval of applications for public assistance.

Project Application - The Project Application is the formal request for aid that a local government or state agency submits to FEMA's Regional Director. It combines and summarizes the Damage Survey Reports for various repair projects for damaged public facilities. The Project Application must be submitted to FEMA's Regional Director within 90 days of the Presidential declaration of a major disaster or within 30 days of an emergency declaration.

Major Disaster - A Major Disaster is any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion or other catastrophe in any part of the United States which, in the determination

of the President, causes damage of sufficient severity and magnitude to warrant disaster assistance by the Federal Government to supplement the efforts and resources of States, local governments, and relief organizations.

Emergency - An Emergency is any hurricane, tornado, storm, flood, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, drought, fire, explosion, or other catastrophe in any part of the United States which, in the determination of the President, requires Federal emergency assistance to supplement State and local efforts to save lives and lessen the threat of a disaster.

Interagency Hazard Mitigation Team - Interagency and intergovernmental hazard mitigation teams are authorized by Office of Management and Budget directive to be created to promote a comprehensive approach to flood hazard mitigation during the post-flood recovery process. The OMB directive requires a report be prepared by the Team within 15 days of a Presidential declaration of a major disaster, that the mitigation activities recommended in the report emphasize non-structural measures, and that federal agencies conform their recovery actions to the recommendations of the report to the fullest extent practicable.

Section 406 - Section 406 of the Disaster Relief Act of 1974 requires state and local governments receiving federal disaster assistance to evaluate natural hazards within the disaster area and to take appropriate action to mitigate them. It also requires the development of a Hazard Mitigation Plan; to be submitted to FEMA's Regional Director 180 days after the Presidential declaration. In return, the section provides federal assistance in hazard mitigation planning. Section 406 is implemented by the regulations in Subpart M of CFR Part 205. [See Appendix II].

Section 1362 - Section 1362 of the National Flood Insurance Act empowers the Flood Insurance Administration, an agency of FEMA, to purchase insured properties that have been seriously damaged by flooding and to transfer the land as open space to a state or local agency. [See discussion in Part II and the statute in Appendix I].

Appendix IV: Bibliography

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