

e-CFR Data is current as of April 25, 2014

Title 44: Emergency Management and Assistance

PART 206—FEDERAL DISASTER ASSISTANCE

<http://www.ecfr.gov/cgi-bin/text-idx?SID=d144dfa181e1cd21e48df24c5845db74&node=44:1.0.1.4.57&rgn=div5#44:1.0.1.4.57.8.18.1>

Subpart G—Public Assistance Project Administration

SOURCE: 55 FR 2304, Jan. 23, 1990, unless otherwise noted.

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§206.200 General.

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

(b) *What policies apply to FEMA public assistance grants?* (1) The Stafford Act requires that we deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations. We expect the Grantee and the subgrantee to adhere to Stafford Act requirements and to these regulations when administering our public assistance grants.

(2) The regulations entitled “Uniform Requirements for Grants and Cooperative Agreements to State and Local Governments,” published at 44 CFR part 13, place requirements on the State in its role as Grantee and gives the Grantee discretion to administer federal programs under their own procedures. We expect the Grantee to:

(i) Inform subgrantees about the status of their applications, including notifications of our approvals of Project Worksheets and our estimates of when we will make payments;

(ii) Pay the full amounts due to subgrantees as soon as practicable after we approve payment, including the State contribution required in the FEMA-State Agreement; and

(iii) Pay the State contribution consistent with State laws.

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999]

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§206.201 Definitions used in this subpart.

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

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

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

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

(e) *Grantee*. Grantee means the government to which a grant is awarded, and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, except as provided in §206.202(f), the State for which the emergency or major disaster is declared is the grantee. However, an Indian Tribal government may choose to be a grantee, or it may act as a subgrantee under the State. If an Indian Tribal government is the grantee, it will assume the responsibilities of the “grantee” or “State” as described in this part with respect to administration of the Public Assistance program.

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

(g) *Host-State*. A State or Indian Tribal government that by agreement with FEMA provides sheltering and/or evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a “Host-Tribe.”

(h) *Impact-State*. The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to §206.208.

(i) *Indian Tribal government* means any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

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

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

(l) A *project* is a logical grouping of work required as a result of the declared major disaster or emergency. The scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90-91).

(1) We must approve a scope of eligible work and an itemized cost estimate before funding a project.

(2) A project may include eligible work at several sites.

(m) *Project approval* means the process in which the Regional Administrator, or designee, reviews and signs an approval of work and costs on a Project Worksheet or on a batch of Project Worksheets. Such approval is also an obligation of funds to the Grantee.

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

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

[55 FR 2304, Jan. 23, 1990, as amended at 63 FR 64425, Nov. 20, 1998; 64 FR 55160, Oct. 12, 1999; 74 FR 60213, Nov. 20, 2009]

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§206.202 Application procedures.

(a) *General.* This section describes the policies and procedures that we use to process public assistance grants to States. Under this section the State is the Grantee. As Grantee you are responsible for processing subgrants to applicants under 44 CFR parts 13 and 206, and your own policies and procedures.

(b) *Grantee.* You are the grant administrator for all funds provided under the Public Assistance grant program. Your responsibilities under this section include:

(1) Providing technical advice and assistance to eligible subgrantees;

(2) Providing State support for project identification activities to include small and large project formulation and the validation of small projects;

(3) Ensuring that all potential applicants are aware of available public assistance; and

(4) Submitting documents necessary for the award of grants.

(c) *Request for Public Assistance (Request).* The Grantee must send a completed *Request* (FEMA Form 90-49) to the Regional Administrator for each applicant who requests public assistance. You must send *Requests* to the Regional Administrator within 30 days after designation of the area where the damage occurred.

(d) *Project Worksheets.* (1) An applicant's authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs for disaster-related damages for funding.

(i) We or the applicant, assisted by the State as appropriate, will prepare a Project Worksheet (FEMA Form 90-91) for each project. The Project Worksheet must identify the eligible scope of work and must include a quantitative estimate for the eligible work.

(ii) The applicant will have 60 days following its first substantive meeting with us to identify and to report damage to us.

(2) When the estimated cost of work on a project is less than \$3,000, that work is not eligible and we will not approve a Project Worksheet for the project. Such \$3,000 amount shall be adjusted annually to

reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(e) *Grant approval.* (1) Before we obligate any funds to the State, the Grantee must complete and send to the Regional Administrator a Standard Form (SF) 424, Application for Federal Assistance, and a SF 424D, Assurances for Construction Programs. After we receive the SF 424 and SF 424D, the Regional Administrator will obligate funds to the Grantee based on the approved Project Worksheets. The Grantee will then approve subgrants based on the Project Worksheets approved for each applicant.

(2) When the applicant submits the Project Worksheets, we will have 45 days to obligate Federal funds. If we have a delay beyond 45 days we will explain the delay to the Grantee.

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

(1) *Host-State Evacuation and/or Sheltering.* (i) *General.* A grant to a host-State for sheltering and/or evacuation support is available under this section when an impact-State requests direct Federal assistance for sheltering and/or evacuation support pursuant to §206.208. To receive this grant, a host-State must enter into a FEMA-Host-State Agreement, amend its State Administrative Plan pursuant to §206.207, and submit a Standard Form SF424 *Application for Federal Assistance* directly to FEMA to apply for reimbursement of eligible costs for evacuating and/or sheltering individuals from an impact-State. Upon award, the host-State assumes the responsibilities of the “grantee” or “State” under this part with respect to its grant award.

(ii) *Force Account Labor Costs.* For the performance of eligible evacuation and sheltering support under sections 403 or 502 of the Stafford Act, the straight-time salaries and benefits of a host-State's permanently employed personnel are eligible for reimbursement. This is an exception to §206.228(a)(2).

(2) *Time limitations.* The Regional Administrator may extend the time limitations shown in paragraphs (c) and (d) of this section when the Grantees justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the grantee's or subgrantee's control.

[64 FR 55160, Oct. 12, 1999, as amended at 74 FR 15350, Apr. 3, 2009; 74 FR 60213, Nov. 20, 2009; 79 FR 10686, Feb. 26, 2014]

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§206.203 Federal grant assistance.

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

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

(c) *Project funding—(1) Large projects.* When the approved estimate of eligible costs for an individual project is \$120,000 or greater, Federal funding shall equal the Federal share of the actual eligible costs documented by a grantee. Such \$120,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(2) *Small projects.* When the approved estimate of costs for an individual project is less than \$120,000, Federal funding shall equal the Federal share of the approved estimate of eligible costs. Such \$120,000 amount shall be adjusted annually as indicated in paragraph (c)(1) of this section.

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

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

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

(ii) Federal funding for alternate projects for damaged public facilities will be 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iii) Federal funding for alternate projects for damaged private nonprofit facilities will be 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

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

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

[55 FR 2304, Jan. 23, 1990, as amended at 66 FR 22444, May 4, 2001; 73 FR 20551, Apr. 16, 2008; 79 FR 10686, Feb. 26, 2014]

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§206.204 Project performance.

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

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

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

COMPLETION DEADLINES

Type of work	Months
Debris clearance	6
Emergency work	6

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

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

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

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

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

(e) *Cost Overruns.* (1) During the execution of approved work a subgrantee may find that the actual project costs exceed the approved Project Worksheet estimates. Such cost overruns normally fall into the following three categories:

(i) Variations in unit prices;

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

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

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

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

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§206.205 Payment of claims.

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

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

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

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

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§206.206 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

(a) *Format and Content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Administrator. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Administrator. The grantee may make grantee-related appeals to the Regional Administrator. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* (1) The Regional Administrator will consider first appeals for public assistance-related decisions under subparts A through L of this part.

(2) The Assistant Administrator for the Disaster Assistance Directorate will consider appeals of the Regional Administrator's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time Limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Administrator within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Administrator (for first appeals) or Assistant Administrator for the Disaster Assistance Directorate (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Administrator will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Administrator or Assistant Administrator for the Disaster Assistance Directorate will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Assistant Administrator for the Disaster Assistance Directorate before May 8, 1998 may be appealed to the Administrator in accordance with 44 CFR 206.440 as it existed before May 8, 1998 (44 CFR, revised as of October 1, 1997).

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

[63 FR 17110, Apr. 8, 1998; 63 FR 24970, May 6, 1998]

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§206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 44 CFR part 13 apply to all disaster assistance grants and subgrants.

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

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

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

(iii) Procedures for:

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

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

(C) Assisting FEMA in determining applicant eligibility;

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

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

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

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

(H) Compliance with the audit requirements of 44 CFR part 13;

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

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

(K) Determining the reasonable percentage or amount of pass-through funds for management costs provided under 44 CFR part 207 that the grantee will make available to subgrantees, and the basis, criteria, or formula for determining the subgrantee percentage or amount.

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

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

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

(c) *Audit*—(1) *Nonfederal audit*. For grantees or subgrantees, requirements for nonfederal audit are contained in FEMA regulations at 44 CFR part 13 or OMB Circular A-110 as appropriate.

(2) *Federal audit*. In accordance with 44 CFR part 13, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990, as amended at 72 FR 57875, Oct. 11, 2007; 74 FR 15350, Apr. 3, 2009]

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§206.208 Direct Federal assistance.

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(1) and (4), 403, 407, 502(a)(1), (5) and (7) of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in §206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

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

(1) A written agreement that the State will:

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

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

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

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

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

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

(c) *Implementation.* (1) If the Regional Administrator approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

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

(3) If an impact-State requests assistance in providing evacuation and sheltering support outside an impact-State, FEMA may directly reimburse a host-State for such eligible costs through a grant to a host-State under an impact-State's declaration, consistent with §206.202(f)(1). FEMA may award a grant to a host-State when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State, and a host-State agrees in writing to provide such support to an impact-State.

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

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the Regional Administrator's approved scope of work, costs and time limitations. The

performing Federal agency shall also keep the Regional Administrator and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonFederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

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

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999; 74 FR 60214, Nov. 20, 2009]

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§206.209 Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607).

(a) *Scope.* Pursuant to section 601 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, this section establishes procedures for arbitration to resolve disputed Public Assistance applications under the following major disaster declarations: DR-1603, DR-1604, DR-1605, DR-1606, and DR-1607.

(b) *Applicability.* An applicant or subgrantee (hereinafter “applicant” for purposes of this section) may request arbitration of a determination made by FEMA on an application for Public Assistance, provided that the total amount of the project is greater than \$500,000, and provided that:

(1) the applicant is eligible to file an appeal under §206.206; or

(2) the applicant had a first or second level appeal pending with FEMA pursuant to §206.206 on or after February 17, 2009.

(c) *Governing rules.* An applicant that elects arbitration agrees to abide by this section and applicable guidance. The arbitration will be conducted pursuant to procedure established by the arbitration panel.

(d) *Limitations—(1) Election of remedies.* A request for arbitration under this section is in lieu of filing or continuing an appeal under §206.206.

(2) *Final agency action under §206.206.* Arbitration is not available for any matter that obtained final agency action by FEMA pursuant to §206.206 prior to February 17, 2009. Arbitration is not available for determinations for which the applicant failed to file a timely appeal under the provisions of §206.206 prior to August 31, 2009, or for determinations which received a decision on a second appeal from FEMA prior to February 17, 2009.

(e) *Request for arbitration—(1) Content of request.* The request for arbitration must contain a written statement and all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(2) *Submission by the applicant to the Grantee, the FEMA Regional Administrator, and the arbitration administrator.* An applicant under paragraph (b)(1) of this section must submit its request for

arbitration in writing simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator within 30 calendar days after receipt of notice of the determination that is the subject of the arbitration request or by September 30, 2009, whichever is later. An applicant under paragraph (b)(2) of this section must make a request for arbitration in writing and, if FEMA has not issued a decision on the appeal, submit a withdrawal of the pending appeal, simultaneously to the Grantee, the FEMA Regional Administrator, and the arbitration administrator by October 30, 2009.

(3) *Submission by the Grantee to the arbitration administrator and FEMA.* Within 15 calendar days of receipt of the applicant's request for arbitration, the Grantee must forward the name and address of the Grantee's authorized representative or counsel, and may forward a written recommendation in support or opposition to the applicant's request for arbitration, simultaneously to the FEMA Regional Administrator, the arbitration administrator, and the applicant.

(4) *Submission of FEMA's response.* FEMA will submit a memorandum in support of its position, a copy of the Project Worksheet(s), and any other supporting information, as well as the name and address of its authorized representative or counsel, simultaneously to the arbitration administrator, the Grantee, and the applicant, within 30 calendar days of receipt of the applicant's request for arbitration.

(5) *Process for submissions.* When submitting a request for arbitration, the applicant should describe its claim with sufficient detail so that the circumstances of the dispute are clear to the arbitration panel. All papers, notices, or other documents submitted to the arbitration administrator under this section by the applicant, the Grantee, or FEMA will be served on each party's authorized representative or counsel. The submitting party will make such service by courier or overnight delivery service (such as Federal Express, DHL, United Parcel Service, or the United States Postal Service overnight delivery), addressed to the party, representative, or counsel, as applicable, at its last known address.

(f) *Selection of arbitration panel.* The arbitration administrator will select the arbitration panel for arbitration and notify the applicant, FEMA, and the Grantee of the names and identities of the arbitrators selected for the panel.

(g) *Preliminary conference.* The arbitration panel will hold a preliminary conference with the parties and/or representatives of the parties within 10 business days of the panel's receipt of FEMA's response to the request for arbitration. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The date and place of any oral hearing will be set at the preliminary conference. The preliminary conference will be conducted by telephone.

(h) *Hearing—(1) Request for hearing.* The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim in person, by telephone conference, or other means during which all the parties may simultaneously hear all other participants. If the applicant or FEMA would like to request an oral hearing, the request must be made no later than the preliminary conference.

(2) *Location of hearing.* If an in-person hearing is authorized, it will be held at a hearing facility of the arbitration panel's choosing.

(3) *Conduct of hearing.* Each party may present its position through oral presentations by individuals designated in advance of the hearing. These presentations may reference documents submitted pursuant to paragraph (e) of this section; the parties may not provide additional paper submissions at the hearing. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(4) *Closing of hearing.* The panel will inquire of each party whether it has any further argument. When satisfied that the record is complete, the panel will declare the hearing closed, unless a post-

hearing submission of additional information or a memorandum of law is to be provided in accordance with this paragraph. The hearing will be declared closed as of the date set by the panel for the submission of the additional information or the memorandum of law.

(5) *Time limits.* The panel will endeavor to hold the hearing within 60 calendar days of the preliminary conference.

(6) *Postponement.* The arbitration panel may postpone a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 business days of the postponement, the arbitration panel will notify the parties of the rescheduled date of the hearing.

(7) *Record of the hearing.* There will be no recording of the hearing, unless a party specifically requests and arranges for such recording at its own expense.

(8) *Post-hearing submission of additional information.* A party may file with the arbitration panel additional information or a memorandum of law after the hearing upon the arbitration panel's request or upon the request of one of the parties with the panel's consent. The panel will set the time for submission of the additional information or the memorandum of law.

(9) *Reopening of hearing.* The hearing may be reopened on the panel's initiative under compelling circumstances at any time before the decision is made.

(i) *Review by the arbitration panel.* (1) *Determination of timeliness.* Upon notification by FEMA, or on its own initiative, the arbitration panel will determine whether the applicant timely filed a request for arbitration.

(2) *Substantive review.* The arbitration panel will consider all relevant written materials provided by the applicant, the Grantee, and FEMA, as well as oral presentations, if any. If the panel deems it appropriate or necessary, it may request additional written materials from either or both parties or seek the advice or expertise of independent scientific or technical subject matter experts.

(j) *Ex parte communications.* No party and no one acting on behalf of any party will engage in ex parte communications with a member of the arbitration panel. If a party or someone acting on behalf of any party engages in ex parte communications with a member of the arbitration panel, the party that engaged in such communication will provide a summary or a transcript of the entire communication to the other parties.

(k) *Decision—*(1) *Time limits.* The panel will make every effort to issue a written decision within 60 calendar days after the panel declares the hearing closed pursuant to paragraph (h)(4) of this section, or, if a hearing was not requested, within 60 calendar days following the receipt of FEMA's response to the request for arbitration. A decision of the panel may take longer than 60 calendar days if the arbitration involves a highly technical or complex matter.

(2) *Form and content.* The decision of the panel will be in writing and signed by each member of the panel. The panel will issue a reasoned decision that includes a brief and informal discussion of the factual and legal basis for the decision.

(3) *Finality of decision.* A decision of the majority of the panel shall constitute a final decision, binding on all parties. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision.* Notice and delivery of the decision will be by facsimile or other electronic means and by regular mail to each party or its authorized representative or counsel.

(l) *Costs.* FEMA will pay the fees associated with the arbitration panel, the costs of any expert retained by the panel, and the arbitration facility costs, if any. The expenses for each party, including attorney's fees, representative fees, copying costs, costs associated with attending any hearing, or any other fees not listed in this paragraph will be paid by the party incurring such costs.

(m) *Guidance.* FEMA may issue separate guidance as necessary to supplement this section.

[FR 44767, Aug. 31, 2009]

§206.210 Dispute Resolution Pilot Program.

(a) *Scope.* Pursuant to section 1105 of the Sandy Recovery Improvement Act of 2013, Public Law 113-2, this section establishes procedures for a Dispute Resolution Pilot Program under which an applicant or subgrantee (hereinafter "applicant" for purposes of this section) may request the use of binding arbitration by a panel to resolve disputes arising under section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, 5173).

(b) *Definitions.* In this section, the following definitions apply:

Administrative record means all the documents and materials directly or indirectly considered by the agency and relied upon in making the first appeal determination pursuant to §206.206. This record may include, but is not limited to, Project Worksheets (all versions) and supporting backup documentation, correspondence, photographs, and technical reports.

Applicant is used throughout this regulation text and refers to the definition in FEMA's regulations at 44 CFR 206.201(a).

Arbitration sponsor means the entity or entities FEMA selects to administer the arbitrations requested under this rule.

Frivolous means the applicant knew or reasonably should have known that its actions lack an arguable basis in law, policy, or in fact.

Grantee is used throughout this regulation text and it refers to the definition in FEMA's regulations at 44 CFR 206.201(e).

Legitimate amount in dispute means the difference between the amount of grant funding sought by the applicant for a project as reimbursable under the Public Assistance Program and the amount of grant funding which FEMA has determined eligible for a project under the Public Assistance Program.

Non-Federal share means that the project is not 100% federally funded and the applicant or grantee bear a percentage of the costs pursuant to the cost sharing provisions established in the FEMA-State Agreement and the Stafford Act;

Notice means actual notice that is transmitted to and received by a representative of the applicant either via regular mail, facsimile, or electronic transmission. The notice may be transmitted simultaneously to the grantee and the applicant.

Panel means an independent review panel referenced in section 1105(b)(1) of SRIA. A panel consists of three members who are qualified to review and resolve disputes under section 1105 of the SRIA.

(c) *Applicability.* This section applies to an applicant that wants to request arbitration of a determination FEMA has previously made on an applicant's application for Public Assistance for disasters declared on or after October 30, 2012. The following criteria apply:

(1) The legitimate amount in dispute is equal to or greater than \$1,000,000, which sum the FEMA Administrator will adjust annually via a FEDERAL REGISTER Notice to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor;

(2) The applicant bears a non-Federal share of the cost; and,

(3) The applicant has received a decision on a first appeal, but not a decision on a second appeal, pursuant to §206.206.

(d) *Governing rules.* The arbitration will be governed by applicable requirements in section 403, 406, or 407 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170b, 5172, 5173) and the interpretations of those sections of the Stafford Act.

(e) *Limitations*—(1) *Date of disaster.* FEMA can only consider an applicant's Request for Arbitration of a public assistance grant for disasters declared on or after October 30, 2012.

(2) *Election of remedies.* An applicant can only request arbitration under this section if the applicant has not previously filed a second appeal under §206.206. If an applicant requests arbitration under this section, the applicant waives the option of filing a second appeal under §206.206.

(3) *Final agency action under §206.206.* Arbitration under this section is not available for any request submitted by an applicant for which FEMA issued a final agency action in the form of a decision on a second appeal pursuant to §206.206.

(f) *Request for Arbitration.* (1) An applicant who is dissatisfied with a decision on a first appeal may initiate binding arbitration by submitting a Request for Arbitration simultaneously to the grantee, the arbitration sponsor and FEMA.

(2) An applicant must submit the Request for Arbitration no later than 15 calendar days of applicant's receipt of notice of the first appeal decision that is the subject of the arbitration request.

(g) *Administrative record.* Within 15 calendar days of receipt of the Request for Arbitration, FEMA will simultaneously provide a copy of the administrative record to the arbitration sponsor, the applicant and the grantee.

(h) *Submissions related to arbitration*—(1) *Grantee recommendation.*

(i) Within 15 calendar days of receipt of the Request for Arbitration, the grantee must forward to FEMA the name and address of the grantee's authorized representative.

(ii) The grantee may submit a written recommendation in support or opposition of the applicant's claim via electronic submission simultaneously to the applicant, the arbitration sponsor, and FEMA.

(2) *Applicant statement of claim.* (i) Within 30 calendar days of applicant's receipt of the administrative record, the applicant must submit a written arbitration statement of claim that makes the circumstances of the dispute clear. The written arbitration statement of claim must include sufficient detail and citation to supporting documents from the administrative record and specific section references, so that the circumstances of the dispute are clear.

(ii) The applicant will only include issues directly raised and decided in the first appeal and will also cite to applicable statutes, regulations, policies, or guidance in support of their claim.

(iii) The applicant must provide the written statement of claim via electronic submission simultaneously to FEMA, the grantee, and the arbitration sponsor.

(3) *FEMA response.* Within 30 calendar days of receipt of the applicant's statement of claim, FEMA will submit a memorandum in support of its position and the name and address of its authorized representative via electronic submission simultaneously to the arbitration sponsor, the grantee, and the applicant.

(i) *Selection of panel.* The arbitration sponsor will select the panel. All arbitrators must be neutral, independent, and impartial.

(j) *Challenge of arbitrator(s).* Any arbitrator may be challenged by a party, if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.

(1) A party challenging an arbitrator will send notice stating the reasons for the challenge within 15 calendar days after being notified of that arbitrator's appointment or after becoming aware of the circumstances that give rise to the party's justifiable doubt as to that arbitrator's impartiality or independence.

(2) When an arbitrator has been challenged by a party, the other party will have the right to respond to the challenge within 15 calendar days after receipt of the notice of the challenge.

(3) The other party may agree to the challenge and in such circumstances the arbitration sponsor will appoint a replacement arbitrator. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge will be made by the arbitration sponsor. If the arbitration sponsor orders the withdrawal of the challenged arbitrator, the arbitration sponsor will appoint a replacement arbitrator.

(k) *Preliminary administrative conference.* The panel will hold a preliminary administrative conference with the parties and/or representatives of the parties within 15 calendar days of the panel's receipt of FEMA's response to the applicant's statement of claim. The panel and the parties will discuss the future conduct of the arbitration, including clarification of the disputed issues, request for disqualification of an arbitrator (if applicable), and any other preliminary matters. The panel will provide the parties with the opportunity to request a hearing and, if requested,

(1) A party must request a hearing to the panel no later than the time of the preliminary administrative conference.

(2) If a hearing is requested, the panel will set the date and place of any hearing and set a deadline for the parties to exchange witness lists. Within 10 calendar days of the preliminary conference, the independent review panel will issue a scheduling order which memorializes the matters heard at the conference and the upcoming deadlines.

(l) *Jurisdictional and arbitrability challenges.* Any party may raise a jurisdictional or arbitrability challenge at any time during the arbitration.

(1) When jurisdiction or arbitrability has been challenged by a party, the other party will have the right to respond to the challenge within 15 calendar days after receipt of the notice of the challenge.

(2) The panel may suspend or continue the arbitration proceedings during the pendency of the challenge. The panel must rule upon the challenge prior to any hearing in the matter and will dismiss any matter that is untimely or outside the panel's jurisdiction. The panel's dismissal will be with prejudice and there will be no further arbitration of the issue giving rise to the Request for Arbitration.

(m) *Hearing—(1) Request for hearing.* The panel will provide the applicant and FEMA with an opportunity to make an oral presentation on the substance of the applicant's claim, by telephone conference, or other means during which all parties may simultaneously hear all other participants.

(2) *Location of hearing.* If an in-person hearing is requested and authorized by the panel, it will be held at a hearing facility of the panel's choosing.

(3) *Conduct of hearing.* Each party must present its position at the hearing through oral presentations by witnesses the party has identified pursuant to the deadline and terms established by the panel. The presentations will only relate to those issues raised and decided in the first appeal and only reference documents included in the administrative record.

(4) *Time limits.* The panel should hold the hearing within 60 calendar days of the preliminary conference.

(5) *Postponement or continuance.* The panel may postpone or continue a hearing upon agreement of the parties, or upon request of a party for good cause shown. Within 10 calendar days of the date the panel grants a party's request for postponement or continuance, the panel will notify the parties of the rescheduled date of the hearing.

(6) *Transcript of the hearing.* A party may specifically request and arrange for a written transcript of the hearing at its own expense.

(n) *Standard of review.* The panel will only set aside the agency determination if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. In the case of a FEMA finding of material fact adverse to the applicant on the first appeal, the panel will only set aside or reverse such a finding if the finding was clearly erroneous.

(o) *Ex parte communications.* No party will have any ex parte communication with the arbitrators unless the parties agree otherwise. If a party violates this provision, the panel will ensure that a memorandum of the communication is included in the record and that an opportunity for rebuttal is allowed. The panel may require the party who engages in an unauthorized ex parte communication, to show cause why the issue should not be resolved against it for the improper conduct.

(p) *Decision—(1) Time limits.*

(i) The panel will issue a written decision within 60 calendar days from the conclusion of the hearing.

(ii) If a hearing was not requested and approved, the panel will issue a written decision within 60 calendar days from the preliminary administrative conference.

(2) *Form and content.* The panel will issue a reasoned decision that includes findings of fact and conclusions of law that will set forth the reasons for the decision, with citations to the record or testimony taken during the hearing under this section which support the panel's disposition of a decision. The majority decision of the panel will be in writing, signed by each member of the panel in agreement with the decision. A dissenting member of the panel may issue a separate written dissent that will set forth the reasons for the dissent.

(3) *Finality of decision.* A decision of the majority of the panel will constitute a final decision, binding on all parties, but will not be binding precedent for any future arbitration hearings or FEMA administrative decisions. Final decisions are not subject to further administrative review. Final decisions are not subject to judicial review, except as permitted by 9 U.S.C. 10.

(4) *Delivery of decision.* The panel will deliver its decision via simultaneous electronic submission to each party or its authorized representative.

(q) *Costs*—(1) *Fees.* FEMA will pay all fees associated with the independent review panel, including arbitrator compensation, and the arbitration facility costs.

(2) *Expenses.* Expenses for each party will be paid by the party who incurred the expense.

(r) *Frivolous requests.* If, upon notification by FEMA, or on its own initiative the panel determines the applicant's Request for Arbitration to be frivolous, the panel will deny the Request for Arbitration and direct the applicant to reimburse FEMA for reasonable costs FEMA incurred, including fees and expenses.

(s) *Deadline.* FEMA cannot consider an applicant's request for review by a panel under this section if the request is made after December 31, 2015. However, pursuant to this rule, FEMA will continue to process and finalize any proper request made on or before December 31, 2015.

[78 FR 49961, Aug. 16, 2013]

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§§206.211-206.219 [Reserved]

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Subpart H—Public Assistance Eligibility

SOURCE: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

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§206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, and 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

[67 FR 8854, Feb. 26, 2002]

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§206.221 Definitions.

(a) *Educational institution* means:

- (1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or
- (2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or
- (3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

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

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

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

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

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

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

(3) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

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

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

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

(7) *Other essential governmental service facility* means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.

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

- (1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or
- (2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

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

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

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

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993; 66 FR 22445, May 4, 2001]

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§206.222 Applicant eligibility.

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

- (a) State and local governments.
- (b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in §205.221(e).
- (c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

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§206.223 General work eligibility.

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

- (1) Be required as the result of the emergency or major disaster event;
- (2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and

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

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

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

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

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

[55 FR 2307, Jan. 23, 1990, as amended at 71 FR 40027, July 14, 2006; 74 FR 60214, Nov. 20, 2009]

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§206.224 Debris removal.

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

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

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

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

(4) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Assistant Administrator for the Disaster Assistance Directorate extends this period.

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

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

[55 FR 2307, Jan. 23, 1990, as amended at 66 FR 33901, June 26, 2001]

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§206.225 Emergency work.

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

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

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

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

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

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

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

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

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§206.226 Restoration of damaged facilities.

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

(a) *Assistance under other Federal agency (OFA) programs.* (1) Generally, disaster assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an event which is declared a major disaster.

(2) An exception to the policy described in paragraph (a)(1) of this section exists for public elementary and secondary school facilities which are otherwise eligible for assistance from the Department of Education (ED) under 20 U.S.C. 241-1 and 20 U.S.C. 646. Such facilities are also eligible

for assistance from FEMA under the Stafford Act, and grantees shall accept applications from local educational agencies for assistance under the Stafford Act.

(3) The exception does not cover payment of increased current operating expenses or replacement of lost revenues as provided in 20 U.S.C. 241-1(a) and implemented by 34 CFR 219.14. Such assistance shall continue to be granted and administered by the Department of Education.

(b) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a grantee must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

(c) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility in accordance with §206.221(e)(3)), sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization not falling within the criteria of §206.226(c)(1) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C.636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

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

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

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

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

(3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.

(ii) This paragraph (d) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.

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

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

(e) *Hazard mitigation.* In approving grant assistance for restoration of facilities, the Regional Administrator may require cost effective hazard mitigation measures not required by applicable

standards. The cost of any requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

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

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

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

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

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

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

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

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

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

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

(5) If relocation of a facility is not feasible or cost effective, the Regional Administrator shall disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 10, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, an alternative project may be applied for.

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

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

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

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

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

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

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

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

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 55022, Oct. 25, 1993; 63 FR 5897, Feb. 5, 1998; 66 FR 22445, May 4, 2001; 67 FR 8854, Feb. 26, 2002; 68 FR 61371, Oct. 28, 2003; 69 FR 55097, Sept. 13, 2004; 74 FR 15350, Apr. 3, 2009; 74 FR 47482, Sept. 16, 2009]

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§206.227 Snow assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

[62 FR 45330, Aug. 27, 1997]

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§206.228 Allowable costs.

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

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

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

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

exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

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

(2) *Force Account Labor Costs.* The straight- or regular-time salaries and benefits of a grantee's or subgrantee's permanently employed personnel are:

(i) Eligible in calculating the cost of eligible permanent repair, restoration, and replacement of facilities under section 406 of the Stafford Act;

(ii) Eligible, at the Administrator's discretion, in calculating the cost of eligible debris removal work under sections 403(a)(3)(A), 502(a)(5), and 407 of the Stafford Act for a period not to exceed 30 consecutive calendar days, provided the grantee's or subgrantee's permanently employed personnel are dedicated solely to eligible debris removal work for any major disaster or emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy; and

(iii) Not eligible in calculating the cost of other eligible emergency protective measures under sections 403 and 502 of the Stafford Act, except for those costs associated with host state evacuation and sheltering, as established in §206.202.

(3) Administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207.

(b) [Reserved]

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47996, Sept. 14, 1993; 63 FR 64426, Nov. 20, 1998; 64 FR 55161, Oct. 12, 1999; 72 FR 57875, Oct. 11, 2007; 77 FR 67290, Nov. 9, 2012]

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§§206.229-206.249 [Reserved]

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Subpart I—Public Assistance Insurance Requirements

SOURCE: 56 FR 64560, Dec. 11, 1991, unless otherwise noted.

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§206.250 General.

(a) Sections 311 and 406(d) of the Stafford Act, and the Flood Disaster Protection Act of 1973, Public Law 93-234, set forth certain insurance requirements which apply to disaster assistance provided by FEMA. The requirements of this subpart apply to all assistance provided pursuant to section 406 of the Stafford Act with respect to any major disaster declared by the President after November 23, 1988.

(b) Insurance requirements prescribed in this subpart shall apply equally to private nonprofit (PNP) facilities which receive assistance under section 406 of the Act. PNP organizations shall submit the necessary documentation and assurances required by this subpart to the Grantee.

(c) Actual and anticipated insurance recoveries shall be deducted from otherwise eligible costs, in accordance with this subpart.

(d) The full coverage available under the standard flood insurance policy from the National Flood Insurance Program (NFIP) will be subtracted from otherwise eligible costs for a building and its contents within the special flood hazard area in accordance with §206.252.

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

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§206.251 Definitions.

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

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

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

(d) *National Flood Insurance Program (NFIP)* means the program authorized by the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.*

(e) *Special flood hazard area* means an area having special flood, mudslide, and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary map (FHBM) or the Flood Insurance Rate Map (FIRM) issued by FEMA as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30 VE, V, M, or E. "Special flood hazard area" is synonymous with "special hazard area", as defined in 44 CFR part 59.

(f) *Standard Flood Insurance Policy* means the flood insurance policy issued by the Federal Insurance Administrator, or by a Write-Your-Own Company pursuant to 44 CFR 62.23.

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§206.252 Insurance requirements for facilities damaged by flood.

(a) Where an insurable building damaged by flooding is located in a special flood hazard area identified for more than one year by the Administrator, assistance pursuant to section 406 of the Stafford Act shall be reduced. The amount of the reduction shall be the maximum amount of the insurance proceeds which would have been received had the building and its contents been fully covered by a standard flood insurance policy.

(b) The reduction stated above shall not apply to a PNP facility which could not be insured because it was located in a community not participating in the NFIP. However, the provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the PNP unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased.

(c) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a flood, the Grantee shall notify the Regional Administrator of any entitlement to an insurance settlement or recovery. The Regional Administrator shall reduce the eligible costs by the amount of insurance proceeds which the grantee receives.

(d) The grantee or subgrantee is required to obtain and maintain flood insurance in the amount of eligible disaster assistance, as a condition of receiving Federal assistance that may be available. This requirement also applies to insurable flood damaged facilities located outside a special flood hazard area when it is reasonably available, adequate, and necessary. However, the Regional Administrator shall not require greater types and amounts of insurance than are certified as reasonable by the State Insurance Commissioner. The requirement to purchase flood insurance is waived when eligible costs for an insurable facility do not exceed \$5,000.

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§206.253 Insurance requirements for facilities damaged by disasters other than flood.

(a) Prior to approval of a Federal grant for the restoration of a facility and its contents which were damaged by a disaster other than flood, the Grantee shall notify the Regional Administrator of any entitlement to insurance settlement or recovery for such facility and its contents. The Regional Administrator shall reduce the eligible costs by the actual amount of insurance proceeds relating to the eligible costs.

(b)(1) Assistance under section 406 of the Stafford Act will be approved only on the condition that the grantee obtain and maintain such types and amounts of insurance as are reasonable and necessary to protect against future loss to such property from the types of hazard which caused the major disaster. The extent of insurance to be required will be based on the eligible damage that was incurred to the damaged facility as a result of the major disaster. The Regional Administrator shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(2) Due to the high cost of insurance, some applicants may request to insure the damaged facilities under a blanket insurance policy covering all their facilities, an insurance pool arrangement, or some combination of these options. Such an arrangement may be accepted for other than flood damages. However, if the same facility is damaged in a similar future disaster, eligible costs will be reduced by the amount of eligible damage sustained on the previous disaster.

(c) The Regional Administrator shall notify the Grantee of the type and amount of insurance required. The grantee may request that the State Insurance Commissioner review the type and extent of insurance required to protect against future loss to a disaster-damaged facility, the Regional Administrator shall not require greater types and extent of insurance than are certified as reasonable by the State Insurance Commissioner.

(d) The requirements of section 311 of the Stafford Act are waived when eligible costs for an insurable facility do not exceed \$5,000. The Regional Administrator may establish a higher waiver amount based on hazard mitigation initiatives which reduce the risk of future damages by a disaster similar to the one which resulted in the major disaster declaration which is the basis for the application for disaster assistance.

(e) The Grantee shall provide assurances that the required insurance coverage will be maintained for the anticipated life of the restorative work or the insured facility, whichever is the lesser.

(f) No assistance shall be provided under section 406 of the Stafford Act for any facility for which assistance was provided as a result of a previous major disaster unless all insurance required by FEMA as a condition of the previous assistance has been obtained and maintained.

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