

**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**
**44 CFR Part 206**
**RIN 3067-AD25**
**Disaster Assistance; Federal  
Assistance to Individuals and  
Households**
**AGENCY:** Federal Emergency  
Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would implement section 206 of the Disaster Mitigation Act of 2000 by consolidating "Temporary Housing Assistance" and "Individual and Family Grant Programs" into a single program called "Federal Assistance to Individuals and Households". Through this consolidation we are attempting to streamline the administration of the provision of assistance to disaster victims.

**DATES:** We (FEMA) invite your comments on this proposed rule, which we should receive by March 11, 2002.

**ADDRESSES:** Please send any comments on this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, or (fax) (202) 646-4536, or (email) [rules@fema.gov](mailto:rules@fema.gov).

**FOR FURTHER INFORMATION CONTACT:** Lumumba Yancey, Readiness, Response and Recovery Directorate, (202) 646-3939, or (email) at [lumumba.yancey@fema.gov](mailto:lumumba.yancey@fema.gov).

**SUPPLEMENTARY INFORMATION:** By virtue of its enactment of section 206(a) of the Disaster Mitigation Act of 2000, Pub.L. 106-390, Congress effectively combined into one section of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act, or the Act) what previously had been two separate provisions. The first is the old version of section 408 of the Stafford Act, 42 U.S.C. 5174, entitled "Temporary Housing Assistance". The second is section 411 of the Stafford Act, 42 U.S.C. 5178, entitled "Individual and Family Grant Programs". Under section 206(d) of Pub.L. 106-390, this consolidation of sections 408 and 411 of the Stafford Act will not become effective until 18 months after enactment of Pub.L. 106-390. The President signed Pub.L. 106-390 on October 30, 2000; the new consolidated authority becomes effective on May 1, 2002. Once made final this proposed rule will guide FEMA's implementation of the new statutory provision.

The intent of section 206 of Pub.L. 106-390 is to consolidate and streamline the provision of assistance under sections 408 and 411 of the Stafford Act. For example, House Report No. 106-40 (the report that accompanied H.R. 707, which became Pub.L. 106-390) indicates that H.R. 707 "attempts to increase the efficiency of existing disaster assistance programs by eliminating unnecessary and complicated aspects of the program. This includes \* \* \* combining the housing and individual and family assistance programs." See p. 11 of House Report No. 106-40.

Because of the clear Congressional interest in streamlining the provision of assistance under the new version of section 408 of the Act, 42 U.S.C. 5174, we propose to administer a consolidated program under section 408. Under the new version of 42 U.S.C. 5174 there would be a single registration period for assistance (see § 206.103 of the proposed rule), a consolidated statement of eligibility and ineligibility conditions for assistance (§ 206.104 of the proposed rule), a consolidated definition of the criteria for assistance (§ 206.105 of the proposed rule), a consolidated appeal process (§ 206.106 of the proposed rule), a consolidated process for recovery of funds (§ 206.107 of the proposed rule), and a consolidated process for possible State administration of certain types of assistance that are authorized by amended section 408 (§ 206.111 of the proposed rule).

We anticipate that generally FEMA will administer all assistance under amended 42 U.S.C. 5174. However, under § 206.111 of the proposed rule the States will have the discretion to administer certain types of assistance previously known as the Individual and Family Grant Programs (see § 206.111(a) of the proposed rule). In addition, we anticipate that some States may ask to participate in the management of a portion of the direct housing program. The decision to allow States to do so is within FEMA's discretion, which we will apply by a Memorandum of Understanding (MOU). States that wish to administer these programs would work with FEMA to develop an annual MOU to govern their activities under 42 U.S.C. 5174 as a precondition of active involvement in such activities. The MOUs would reflect the streamlined approach to the activities authorized by 42 U.S.C. 5174 and would describe different optional procedures for States to use in the administration of the program.

Under § 206.111(a) of the proposed rule, States would be given the option to administer certain types of assistance

under the new authority entitled "Assistance to Address Other Needs." See revised 42 U.S.C. 5174(e). We drafted the proposed regulation to give States this discretion in light of the language of 42 U.S.C. 5174(f), which authorizes States to "request a grant from (FEMA) to provide financial assistance to individuals and households in the State under paragraph (e) \* \* \*." We anticipate that most States that opt to administer this program will use FEMA's processing system in performing their activities, but we also plan to offer States the opportunity to administer the program more independently. At the same time we are sensitive to the clear expression of congressional intent to consolidate and streamline assistance under the provision. We invite comment from the public on the tension between the need to consolidate and streamline the activities which are authorized by the new version of 42 U.S.C. 5174, on the one hand, and the need to ensure the availability of an active State role in the process, on the other hand.

In addition, the proposed rule contemplates that in some situations States may opt to participate in the management of "direct" disaster housing assistance programs under 42 U.S.C. 5174(c)(1)(B). See § 206.111(b) of the proposed rule. Our existing rule at 44 CFR 206.101(s) contemplates the possibility of States managing any portion of a temporary housing program. On the other hand, § 206.111(b) of the proposed rule only contemplates the possibility of a State managing the "direct housing" authority under 42 U.S.C. 5174(c)(1)(B). We decided to draft the regulation in a more limited manner than the current regulation because of the clear congressional desire for a more consolidated and streamlined program under 42 U.S.C. 5174. At the same time we propose to continue the policy of enabling States that desire to do so to become active participants in the process of providing temporary direct housing assistance to their residents in the aftermath of major disasters.

The current version of 42 U.S.C. 5174 does not contain an explicit reference to the possibility of a State administering the temporary housing authority of the Act. Nevertheless, FEMA published 44 CFR 206.101(s) several years ago in spite of the lack of explicit authority for States to administer any portion of the temporary housing authorities of the Stafford Act. Because no one has questioned this rule in the many years that it has been in place, we believe that there is implicit authority to retain a rule that calls for possible State

management of the temporary direct housing authority of the Stafford Act. We solicit input from the public on this aspect of the proposed rule.

42 U.S.C. 5174(b) is the general authority for the President to provide housing assistance to disaster victims, which the President delegated to the Director of FEMA under Executive Order 12148. This new paragraph explicitly indicates that FEMA has authority to determine the most appropriate form of housing assistance to provide to disaster victims. This is a new provision in the Stafford Act that in the past we addressed in our implementing regulations. In addition, 42 U.S.C. 5174(b) states explicitly for the first time that we can provide more than one form of housing assistance to disaster victims "based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation." See 42 U.S.C. 5174(b)(2)(B).

Section 408(a)(3) of the previous version of the Stafford Act stated that "Federal financial and operational assistance under this section shall continue for not longer than 18 months...." The general rule under this provision is that *all* forms of temporary housing assistance are available for up to 18 months, unless FEMA extends the period in the public interest. On the other hand, under the amended version of 42 U.S.C. 5174(c)(1)(B)(ii) the only type of temporary housing assistance that is specifically limited to 18 months is "direct" housing assistance (e.g., mobile homes and travel trailers). However, there is no indication in the Disaster Mitigation Act of 2000 that Congress intended for other forms of temporary housing assistance to be available generally for more than 18 months. In addition, in most cases if we were to provide rental assistance under the new version of 42 U.S.C. 5174(c)(1) for more than 18 months, the total assistance would exceed the \$25,000 cap that is imposed by amended 42 U.S.C. 5174(h). Therefore, we have included a provision in the proposed rule that would limit temporary housing assistance generally (rather than only in the case of the provision of "direct" housing assistance) to no more than 18 months (see § 206.101(d) of the proposed rule). We would appreciate comments from the public on this aspect of the proposed rule.

The new version of 42 U.S.C. 5174(c) identifies the types of housing assistance that FEMA can provide in the aftermath of presidentially-declared major disasters. The types of authorized housing assistance are:

(1) Financial assistance to rent alternate housing (see the amended version of 42 U.S.C. 5174(c)(1)(A), as well as § 206.108(b)(1)(i) of the proposed rule);

(2) "Direct" housing assistance in the form of temporary housing units (e.g., mobile homes and travel trailers) that FEMA purchases or leases for disaster victims, usually in situations where rental accommodations are not available (see the amended version of 42 U.S.C. 5174(c)(1)(B), as well as § 206.108(b)(1)(ii) of the proposed rule);

(3) Financial assistance (up to \$5,000 per household) for the repair of owner-occupied private residences, utilities, and residential infrastructure that are damaged in major disasters (which can be provided without demonstrating that a disaster victim's housing needs can be met by other means, other than by insurance reimbursement) (see the amended version of 42 U.S.C. 5174(c)(2), as well as § 206.108(b)(2) of the proposed rule);

(4) Financial assistance (up to \$10,000 per household) for the replacement of owner-occupied private residences that are damaged by major disasters (see the amended version of 42 U.S.C. 5174(c)(3), as well as § 206.108(b)(3) of the proposed rule); and

(5) Financial assistance or direct assistance to disaster victims to construct permanent housing in insular areas (i.e., the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands) and in Puerto Rico and other remote locations when no alternate housing resources are available and when the other forms of authorized temporary housing assistance are "unavailable, infeasible, or not cost-effective" (see the amended version of 42 U.S.C. 5174(c)(4), as well as § 206.108(b)(4) of the proposed rule).

There are several significant differences between this new version of the Stafford Act's housing authority and the previous version. The previous version of 42 U.S.C. 5174 was entitled "Temporary Housing Assistance", and it authorized exclusively temporary assistance to address the housing needs of disaster victims. The new version of 42 U.S.C. 5174, on the other hand, contains two housing authorities that have more permanent than temporary features. There is now an authorization for replacement housing to be provided to disaster victims (see the amended version of 42 U.S.C. 5174(c)(3), which we discuss below), and there is an authority for permanent housing construction at the new version of 42 U.S.C. 5174(c)(4), which we also discuss below. These new provisions of the Act

suggest congressional recognition that in some unique circumstances we should implement the traditionally temporary housing authorities of the Stafford Act so as to provide a longer term solution to the housing needs of disaster victims.

Another change to the Act relates to 42 U.S.C. 5174(b) of the earlier version of the Act. That provision, which is not in the new version of the temporary housing authority, authorized the payment of mortgage or rental assistance to disaster victims who, as a result of financial hardship caused by a major disaster, were unable to continue paying their pre-disaster rent or mortgages. Because this form of housing assistance is no longer in the Act, for major disasters declared on or after May 1, 2002, this type of housing assistance will not be available under the Stafford Act.

Another change in the new housing authority relates to the authority to provide financial assistance to repair owner-occupied residences in the aftermath of major disasters. The previous version of this authority did not contain a cap on the amount of such assistance. Our practice has been to impose such caps administratively. The new version of the temporary housing authority (see the revised version of 42 U.S.C. 5174(c)(2)) contains a \$5,000 cap on this type of assistance (to be adjusted annually to reflect changes in the Consumer Price Index). See § 206.108(b)(2) of the proposed rule. The \$5,000 cap would cover not only repairs to owner-occupied private residences, but also hazard mitigation measures. The legislative history relating to this new provision suggests that there is some confusion whether the amended language imposes an absolute cap on the amount of authorized repair assistance. Although we believe that the enacted provision creates an absolute \$5,000 cap on this type of assistance, we are concerned that that cap might imprudently tie our hands in our administration of this provision of the revised legislation. Therefore, we ask for public comments on the housing repair authority generally, and on the \$5,000 cap in particular.

Congress also authorized two new forms of housing assistance in the new version of 42 U.S.C. 5174. The first appears at 42 U.S.C. 5174(c)(3). This provision authorizes for the first time in the history of the Federal disaster assistance program funding to replace owner-occupied private residences that are damaged in major disasters. The provision of the proposed regulation that would implement this new authority appears at § 206.108(b)(3) of the proposed rule. The proposed rule

states that before we can provide this type of replacement assistance, an authorized member of the affected household must agree to purchase flood insurance on the replacement housing unit under any applicable flood insurance purchase mandates that are created by the Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994. The proposed rule indicates that this new replacement housing authority would only apply where an owner-occupied private residence could be replaced "in its entirety" for \$10,000 or less (adjusted annually to reflect changes in the Consumer Price Index). FEMA does not expect that it will be feasible to use this authority often.

The second new form of housing assistance in the new version of 42 U.S.C. 5174 authorizes the construction of permanent housing in insular areas and other remote areas where it would not be feasible or cost-effective to rely on other types of temporary housing assistance. On several occasions in the past we have provided permanent housing assistance in remote insular areas of Puerto Rico and various Pacific islands because there were no rental resources available, repairs to pre-disaster residences were not feasible, and it would not have been cost-effective to purchase and ship mobile homes or other readily-fabricated dwellings to the disaster sites. The enactment of this new provision reflects an understanding that in rare, limited circumstances permanent housing assistance may be the only viable way to provide housing in the aftermath of major disasters. We would implement this new authority under § 206.108(b)(4) of the proposed regulation. The new authority could be implemented in insular areas, i.e., the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, and in Puerto Rico and other areas that are eligible to receive disaster assistance under the Stafford Act, but which are so remote as to make other forms of housing assistance extremely difficult and costly to provide.

The regulations that implement the current version of 42 U.S.C. 5174 explicitly refer to the provision of "transient accommodations" assistance. See 44 CFR 206.101(g)(1)(ii). That provision of the existing regulations authorizes FEMA to provide short-term housing assistance for up to 30 days to help disaster victims meet their immediate post-disaster housing needs. The proposed rule that we publish today does not explicitly refer to "transient accommodations", but we propose to provide this type of financial

assistance as an implicit subset of the financial assistance that we will continue to provide under the revised version of 42 U.S.C. 5174(c)(1)(A) of the Stafford Act and under § 206.108(b)(1)(i) of the proposed rule.

The new version of 42 U.S.C. 5174(d) imposes certain terms and conditions on the provision of direct housing assistance to disaster victims. The general rule is that we will place direct housing assistance on a site provided by the State, local government, owner of the site, or by the disaster victim. We can, however, provide a site when we determine that a site that we provide would be more economical or accessible than one provided by the State, local government, site owner, or the disaster victim. The previous version of 42 U.S.C. 5174(a)(4) dictated that the costs of site construction and development would be cost shared between FEMA and the State or local government, but the new version of 42 U.S.C. 5174 does not retain this cost sharing provision. Therefore, we may fund the entire costs of site construction and development in the future" but only where we determine that it is necessary for the Federal government to assume this obligation.

New 42 U.S.C. 5174(d)(2) describes the process for disposal of temporary housing units that are purchased for the use of disaster victims. We may sell such housing units directly to disaster victims who occupy the units if they lack other permanent housing. As described in the proposed rule at § 206.109(a)(1)(ii), the sales price will be at fair market value, except that FEMA may adjust the sales price for purchasers who are not able to pay such an amount for the purchase of a temporary housing unit. As provided under new 42 U.S.C. 5174(d)(2)(A)(iii), as well as § 206.109(a)(1)(iii) of the proposed rule, we would deposit the proceeds of such sales into the Disaster Relief Fund, which we administer to implement the Stafford Act.

Paragraphs (A)(iv) and (B)(ii)(II) of revised 42 U.S.C. 5174(d)(2) relate to the obligation to purchase insurance on disaster housing units. The insurance purchase mandates relate to "hazard insurance" and "flood insurance" (flood insurance is not typically provided in standard homeowners insurance policies). Initially we want to point out that we interpret the mandate to purchase "hazard insurance" to equate to a mandate to obtain standard homeowners insurance policies on disaster housing units that are purchased following major disaster responses. We do not intend to require the purchase of insurance for every

conceivable hazard that might exist in a given locale under these two paragraphs in 42 U.S.C. 5174(d)(2).

We also want to ask those who review this proposed rule to note the different statutory provisions relating to the purchase of flood insurance on housing units that FEMA sells under 42 U.S.C. 5174(d)(2). 42 U.S.C. 5174(d)(2)(A)(iv) and (d)(2)(B)(ii)(II) mandate that as a condition of the sale of a housing unit to disaster victims or to States, to other governmental entities, or to voluntary organizations, respectively, the purchaser must agree to purchase and maintain flood insurance on the housing unit. That mandate does not apply to "any other person" who purchases a housing unit under the terms of 42 U.S.C. 5174(d)(2)(B). There is no indication in the legislation or the legislative history why Congress may have intended to require disaster victims, State or local governments, or voluntary organizations to purchase flood insurance on housing units that FEMA sells in the aftermath of major disasters, but not to require other purchasers of housing units to buy flood insurance. In addition, it is noteworthy that the revised version of 42 U.S.C. 5174(c)(3)(C) (relating to replacement housing grants, as opposed to the sale of housing units that FEMA purchases) only requires the purchase of flood insurance on replacement housing when such housing is in a designated special flood hazard area.

There is no legislative history clarifying the distinction between the different flood insurance purchase mandates in amended 42 U.S.C. 5174. We believe that although there are different provisions relating to flood insurance purchase mandates within 42 U.S.C. 5174, it is important that we should apply the flood insurance purchase mandates arising out of the Act consistently. Therefore, we interpret the various flood insurance purchase mandates of 42 U.S.C. 5174 to apply only when a housing unit is to be placed in a designated special flood hazard area. This interpretation is consistent with the generic flood insurance purchase mandate that arises out of the Flood Disaster Protection Act of 1973, Public Law 93-234. However, in light of the differences between the different flood insurance purchase provisions within this new statutory provision, we invite comments from the public on our interpretation of this issue.

We also want to direct the public's attention to another significant aspect of amended 42 U.S.C. 5174 as it relates to the administration of this authority vis-à-vis the flood insurance purchase mandates of other legislation. Section

102 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4012a, and section 582 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 5154a, respectively, impose stringent flood insurance purchase mandates generically and on disaster victims in particular. It is also noteworthy that 42 U.S.C. 5174(c)(3)(C) of the amended Act (relating to "replacement housing") explicitly provides that there is no authority to waive "any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of \* \* \* replacement housing assistance.

The regulations that implement the current IFG program authorize victims of flood disasters who qualify for IFG assistance to receive flood insurance coverage under a Group Flood Insurance Policy (GFIP). Under the GFIP, IFG assistance is used to purchase a three-year flood insurance policy under the National Flood Insurance Program, which FEMA administers pursuant to the National Flood Insurance Act of 1968, as amended. *See* 44 CFR 206.131(d)(2). No similar provision is included in the proposed rule that accompanies this discussion because we propose to eliminate the GFIP and restore the responsibility for the flood insurance purchase requirement back to the individual or household receiving the federal assistance. Under the current GFIP process, IFG funds are used to purchase three years of flood insurance for disaster victims who are eligible for IFG assistance. If the GFIP process is eliminated, as we are proposing, then victims of flooding disasters will be responsible for obtaining and maintaining flood insurance at their own expense. If they fail to do so, then in the aftermath of future flooding they will not be eligible to receive assistance under subsection 408(e) of the Act. We recognize that while we have the discretion to require disaster victims to purchase flood insurance using their own resources, as we are proposing to do, there are other ways to address this issue. We could keep in place the current GFIP process, pursuant to which disaster victims are provided flood insurance coverage for three years at subsidized rates without having to provide their own resources to pay for such coverage. We could also implement a modified version of the GFIP process, pursuant to which disaster victims would be provided flood insurance for three years at subsidized rates that they would have to pay for using their own resources. Or we could do away with the GFIP process but still provide victims with flood

insurance coverage that would be paid out of assistance for which the disaster victims qualify under section 408 of the Act. *See* § 206.101(k)(3)(i) of the proposed rule. We invite comments from the public on this aspect of the proposed rule.

The amended version of 42 U.S.C. 5174(e), entitled "Financial Assistance to Address Other Needs", is similar to the program that is currently authorized at section 411, "Individual and Family Grant Programs", 42 U.S.C. 5178. Beginning on May 1, 2002, 42 U.S.C. 5174(e) will authorize FEMA, in consultation with the Governor of a State in which the President has declared a major disaster, to provide financial assistance to meet disaster-related medical, dental, and funeral expenses. The section will also authorize FEMA to address personal property, transportation, and other necessary expenses or serious needs resulting from major disasters.

In addition, new 42 U.S.C. 5174(f) addresses the role that States may play in the implementation of the program entitled "Financial Assistance to Address Other Needs". Sections 206.110 and 206.111 of the proposed regulation describe how we will implement these provisions of 42 U.S.C. 5174. Under § 206.111 of the proposed regulation States will have the option (1) to let FEMA administer the financial assistance that 42 U.S.C. 5174(e) authorizes, (2) to work with FEMA to administer the program, or (3) to run the program independently, consistent with the Stafford Act and FEMA's implementing regulations and policies.

The amended version of 42 U.S.C. 5174(f)(2) is a new provision. It relates to the mandates of the Privacy Act, 5 U.S.C. 552a. The new provision states that FEMA should "provide for the substantial and ongoing involvement of the States \* \* \* including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance\* \* \* Section 206.101(j) of the proposed rule would implement this new statutory provision by authorizing FEMA to share applicant information with States in order to facilitate the provision of additional State and local assistance to disaster victims. We would be interested in hearing from members of the public their reaction to this provision of the proposed rule, especially as it relates to the mandates of the Privacy Act.

As mandated in the revised version of 42 U.S.C. 5174(g), the costs of providing "financial assistance to address other

needs" will be cost shared on a 75 percent Federal/25 percent State basis, as was the case before the recent amendments to the Stafford Act. In addition, the amended version of 42 U.S.C. 5174(h) indicates that no individual or household can receive more than \$25,000 (adjusted annually under changes in the Consumer Price Index) with respect to a single major disaster declaration.

Finally, section 206(b) of the Disaster Mitigation Act of 2000 amends section 502(a)(6) of the Stafford Act, 42 U.S.C. 5192(a)(6), to make assistance under the revised version of 42 U.S.C. 5174 available in the aftermath of presidentially-declared emergencies, as well as major disasters. The draft rule that accompanies this discussion refers throughout to declarations of major disaster. However, because of the amendment at section 206(b) there is now authorization to make assistance available under 42 U.S.C. 5174 in both emergencies and major disasters.

#### **National Environmental Policy Act (NEPA)**

NEPA imposes requirements for considering the environmental impacts of agency decisions. It requires that an agency prepare an Environmental Impact Statement (EIS) for "major federal actions significantly affecting the quality of the human environment." If an action may or may not have a significant impact, the agency must prepare an environmental assessment (EA). If, because of this study, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If an action will have a significant effect, then the agency uses the EA to develop an EIS.

Agencies can categorically identify actions that do not normally have a significant impact on the environment. FEMA's existing regulations implementing NEPA exempt from NEPA review the preparation of regulations relating to actions that qualify for categorical exclusions. *See* 44 CFR 10.8(d)(2)(ii). In addition, FEMA's regulations also categorically exclude temporary housing and Individual and Family Grant assistance from NEPA review. *See* 44 CFR 10.8(d)(2)(xix)(D) and (F). Therefore, we have determined that FEMA's rules implementing NEPA exempt this rule from the preparation of an EA or an EIS. The changes reflected in this proposed rule are exempt from NEPA because they reflect administrative changes to the program that would have no effect on the environment. However, we would perform an environmental review under 44 CFR part 10 on any proposed project

that we would fund and implement under the authorities covered by this rule.

#### Paperwork Reduction Act of 1995

This proposed rule contains information collection requirements. As required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3507(d)), we have submitted the proposed rule with a copy of the PRA OMB clearance package to the Office of Management and Budget (OMB) for review. Under the PRA, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number.

FEMA has already obtained OMB approval for the information collection request under OMB Control Number 3067-0009, Disaster Assistance Registration/Application for Disaster Assistance. The information from the form is used to implement the current versions of sections 408 and 411 of the Stafford Act. Although the OMB approval for this information collection request expires July 28, 2003, FEMA is taking steps to reduce the information collection burden relating to this form. Our effort to reduce the burden is independent of the recent amendment to section 408 of the Stafford Act, to the recent repeal of section 411 of the Stafford Act, and the information collection requirements contained in this proposed rule.

#### Collection of Information

*Title:* Request for Approval of Late Application.

*Abstract:* After the registration period ends, FEMA will accept late registrations for an additional 60 days.

FEMA will process late registrations for those applicants who provide justification for the delay in their registration. In order for FEMA to effectively review the late application request, we ask that the request be in writing and explain the reason(s) for the delay in registering.

*Respondents:* Applicant.

*Title:* Request for Continued Assistance (Housing and Medical).

*Abstract:* After the initial assistance, FEMA may provide continued Housing and Medical reimbursement, based on need. In order for FEMA to effectively evaluate the continuing need for housing and/or medical assistance, we ask that the request be in writing and that the applicant provide information about their permanent housing plans or receipts (bills) for medical expenses.

*Respondents:* Applicant.

*Title:* Appeal of Program Decision.

*Abstract:* Under the provisions of section 423 of the Stafford Act, applicants for assistance from FEMA may appeal any eligibility determination. In order for FEMA to effectively respond to an applicants appeal, we ask that the appeal be in writing and explain the reason(s) for the appeal.

*Respondents:* Applicant.

*Title:* Review of Memorandum of Understanding (MOU) and Guidance Supplemental.

*Abstract:* The Governor may request the authority to participate in administration or management of the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively coordinate program activities, we require the State to sign an agreement, which establishes a

partnership between FEMA and the State for the delivery of disaster assistance. The agreement is used to identify the State's proposed level of support and participation during disaster recovery.

*Respondents:* State.

*Title:* Development of Management Plans for Direct Housing (to include Financial Agreement).

*Abstract:* The Governor may request authority to participate in the management of the Temporary Housing-Direct Assistance Program under the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively account for the program costs, we require the State to provide a management plan to address the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including 44 CFR parts 11 and 13.

*Respondents:* State.

*Title:* Development of State Management Plans for Financial Assistance to Address Other Needs (to include Financial Agreement).

*Abstract:* The Governor may request a grant from FEMA to provide financial assistance to individuals and households in the State under the Federal Assistance to Individuals and Households Program. In order for FEMA to effectively account for the program costs, we require the State to provide a management plan to address the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including 44 CFR parts 11 and 13.

*Respondents:* State.

*Estimated Total Annual Burden:*

Information collection request	Number of respondents	Frequency of response	Time per response	Annual burden hours	Annual costs to respondents
Applicants:					
Request for Approval of Late Application .....	8000	1	45 minutes	6000	36000
Request for Continued Assistance (Housing and Medical) .....	2000	1	30 minutes	1000	6000
Appeal of Program Decision (to include review and use of supplemental guidance) .....	30000	1	45 minutes	22500	135000
States:					
Review Memorandum of Understanding (MOU) and Guidance Supplemental .....	56	1	3 hours	168	2676
Development of Management Plans for Direct Housing (to include for Financial Agreements) .....	56	1	2 hours	112	1784
Development of State Administrative Plans for Financial Assistance to Address Other Needs (to include Financial Agreement) .....	56	1	3 hours	168	2676
Total .....	40168			29948	184136

#### Comments

We are soliciting written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency,

including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) obtain

recommendations to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate the extent to which automated, electronic, mechanical, or other

technological collection techniques may further reduce the respondents' burden. Your comments should be submitted to OMB, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Emergency Management Agency, Washington, DC 20503 by [insert date 60 days from the date of publication of this notice in the **Federal Register**].

*For Further Information Contact:* For copies of the information collection requirements in this proposed rule, contact Muriel B. Anderson, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472 using one of the following: telephone number (202) 646-2625; facsimile number (202) 646-2247; or e-mail address: [muriel.anderson@fema.gov](mailto:muriel.anderson@fema.gov).

### Regulatory Planning and Review

Under section 408 of the Stafford Act, as it would be implemented by this proposed rule, FEMA could provide different types of housing assistance to individuals and families whose pre-disaster housing became uninhabitable as a result of a catastrophe that the President declared to be an emergency or a major disaster under the Stafford Act. We described earlier the different forms that housing assistance could take, depending upon the needs of the disaster victim, the location of the disaster victim's residence, the extent of the damage to the victim's residence, the cost to the government of providing different forms of housing assistance, and the availability of alternate interim housing accommodations in the vicinity of the disaster victim's residence. We also described the types of other serious needs that FEMA is authorized to address pursuant to 42 U.S.C. 5174. Based upon its enactment of section 206 of the Disaster Mitigation Act of 2000, as well as the earlier versions of these authorities, Congress has determined that the Federal government should provide certain forms of disaster assistance to individuals and families who are adversely affected by those catastrophes which the President determines to be of sufficient severity and magnitude to require governmental assistance to recover from the effects of such catastrophes. This proposed regulation would merely describe the process by which FEMA would implement this program.

Section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires agencies that promulgate regulations under the Administrative Procedure Act to prepare and make available for public comment an initial regulatory flexibility analysis. Agencies are required in these analyses to describe the impact of

regulatory activities on "small entities", as that term is defined at 5 U.S.C. 601. The term includes "small business concerns" (under section 3 of the Small Business Act), "small organizations" (which is defined as independently owned and operated non-profit entities that are not dominant in their fields), and "small governmental jurisdictions" (which means governments of cities, counties, towns, townships, villages, school districts, or special districts that have populations of less than 50,000). See 5 U.S.C. 601. Because disaster assistance under 42 U.S.C. 5174 is provided to individuals and families, rather than to "small entities", this proposed rule would not have a significant economic impact on small entities. It is obvious that the provision of housing and other forms of assistance to disaster victims in communities with populations under 50,000 would benefit the disaster victims. It is also clear that such assistance would indirectly benefit any "small" communities in which disaster victims live because it would relieve those governments from having to provide disaster relief without assistance from FEMA. Therefore, any impact on small governments that might result from FEMA's implementation of 42 U.S.C. 5174 would be beneficial to those entities. Nevertheless, because this proposed rule would not have a direct impact on small entities, we have determined that there is no need for FEMA to prepare an initial regulatory impact analysis relating to this proposed rule under the Regulatory Flexibility Act. We invite comments from the public on this determination.

In addition, pursuant to Executive Order 12866 we examined whether this proposed rule would be a "significant regulatory action", as that term is defined at section 3(f) of the Executive Order. E.O. 12866 requires agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects. A regulatory impact analysis must be prepared for major rules with economically significant effects (\$100,000,000 in any one year). In the course of our development of this proposed rule vis-à-vis the analysis that is contemplated by E.O. 12866, we reviewed FEMA's costs of implementing the temporary housing authority that is codified at the existing version of 42 U.S.C. 5174 (relating only to the provision of temporary housing assistance) and at the existing version of 42 U.S.C. 5178 Act (relating to the

Individual and Family Grant, or IFG, Program) for the past three fiscal years. Pursuant to section 502(a)(6) of the Stafford Act, 42 U.S.C. 5192(a)(6), temporary housing assistance can be provided in response to either Presidentially-declared emergencies or major disasters. However, Individual and Family Grant assistance can only be provided in response to major disaster declarations. In accordance with the revisions to 42 U.S.C. 5174 that will become effective in May of 2002, the entire range of assistance under the new version of 42 U.S.C. 5174 will be available in the aftermath of both emergencies and major disasters.

Our review of FEMA's costs over the past three fiscal years reveals that in approximately 16 percent of the Presidentially-declared major disasters FEMA did not provide either temporary housing or Individual and Family Grant assistance. This is because the housing and IFG authorities within the Stafford Act are not triggered in every Presidential emergency and major disaster declaration—in particular situations there may only be a need to provide disaster assistance to governmental entities. However, in the majority of the major disasters that the Presidents have declared during the past three fiscal years we did provide housing and IFG assistance. In those major disasters where we provided housing and IFG assistance, there was a broad range of costs associated with the aid. In one major disaster the amount of temporary housing expenditures was only about \$7,700, while in two other major disasters we provided temporary housing assistance which in each situation resulted in the expenditure of approximately \$150,000,000. The range of expenditures for the IFG program was also substantial. In two major disasters FEMA did not distribute any IFG assistance, while in one major disaster during fiscal year 2001 we distributed in excess of \$182,000,000 in IFG assistance. In any event, in each of fiscal years 1999, 2000, and 2001, FEMA paid out in excess of \$100,000,000 as temporary housing and IFG assistance.

Section 3(f) of E.O. 12866 defines "significant regulatory action" as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100,000,000 or more or adversely affect in a material way the economy \* \* \* (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs \* \* \* or (4) Raise novel legal or policy issues.\* \* \*" This proposed

rule does not meet the criteria under paragraphs 2, 3, or 4 of this provision of the Executive Order. In addition, we have determined that this rule is not likely to adversely affect the economy (under paragraph 1 of this provision). It is clear based upon the statistics cited in the preceding paragraph that FEMA will in all likelihood pay out in excess of \$100,000,000 in most fiscal years under 42 U.S.C. 5174 after it becomes effective. Therefore, one could determine that this proposed rule is "significant" pursuant to the definition at section 3(f)(1) of E.O. 12866. For this reason we have prepared the economic impact analysis which follows.

However, we believe it is also noteworthy that this proposed rule does not relate to a new or discretionary program of a regulatory nature. The new version of 42 U.S.C. 5174 reflects a Congressional desire for a consolidated and streamlined approach to the pre-existing authorities of sections 408 and 411 of the Stafford Act, 42 U.S.C. 5174 and 5178, respectively. It is apparent from a review of the statistics cited above that there is already a baseline expenditure by FEMA of amounts which vary from year-to-year depending on each year's disaster activity, but which exceed \$100,000,000 per year. Because the consolidated authority at 42 U.S.C. 5174 has not created a new program, but is merely a refinement of two pre-existing authorities, we do not expect that FEMA will pay out annually in excess of \$100,000,000 more than we currently provide in the course of our implementation of the existing temporary housing and IFG authorities.

We have determined that disaster assistance which will be distributed under 42 U.S.C. 5174 will have a positive impact on disaster victims and their families, on the economies of local and tribal governments which have been affected by emergencies and major disasters, on the economies of States in which catastrophes occur, and generally on the health and safety of communities which are struck by catastrophes. Although FEMA has not performed studies to quantify the positive impacts that have historically inured to the benefit of disaster victims and their communities as a result of the provision of temporary housing and IFG benefits, it is obvious that such forms of assistance have a positive impact. Helping disaster victims obtain temporary housing has significant favorable economic consequences—both directly for disaster victims and their families, and indirectly by funneling money back into local, tribal, and State economies which have been adversely affected by emergencies and major

disasters. The provision of financial assistance to eligible disaster victims enables them to address their short-term needs, both by obtaining housing and by purchasing goods and services that are essential to meeting their disaster-related needs that are not met by insurance or other sources. At the same time, the expenditure by disaster victims of financial assistance provides much-needed boosts to the local, tribal, and State economies, both in the form of expenditures relating to housing needs (e.g., rentals of available housing and construction activities) and relating to other necessary needs (e.g., funeral, medical and dental expenses). It is also obvious that the provision of housing assistance and assistance to address other unmet needs provides an indirect benefit to local governments because it relieves those governments of the burden of providing assistance to their residents and of the associated expenses of caring for families that might otherwise require sheltering and other forms of assistance. However, as stated above, this rule would, for the most part, consolidate and streamline existing authorities, and this rule cannot claim benefits from the existing programs. Thus FEMA expects that the primary benefits of this rule will be a reduction in the cost to the State governments of administering these programs and to the public in obtaining this assistance. FEMA has not analyzed these possible costs savings and requests additional information from the public.

#### **Assessment of Regulation on Families**

The provision of assistance under 42 U.S.C. 5174 pursuant to the proposed rule would also have a positive impact on families under section 654 of the Treasury and General Government Appropriations Act of 1999. That provision requires agencies to assess the impact of proposed agency actions on family well-being, the stability and safety of families, and the performance of family functions. It is clear that FEMA's implementation of the program which is authorized by 42 U.S.C. 5174 will have a beneficial impact on family well-being in the aftermath of emergencies and major disasters. In the absence of such a program there would be a greater possibility that family stability might be at risk as a result of the stresses that inevitably come from the displacement of families from their homes and communities following catastrophes that damage their homes or make them inaccessible. The provision of housing assistance relieves families of financial and emotional stress, enables families to resume a normal lifestyle, and helps maintain the cohesion of

families that have been struck by catastrophes. Therefore, we have determined that this proposed rule is consistent with section 654 of the Treasury and General Government Appropriations Act of 1999 and that FEMA's implementation of the rule would help to stabilize family circumstances following Presidentially-declared emergencies and major disasters.

#### **Executive Orders 11988 and 11990, Floodplain Management and Protection of Wetlands**

Under Executive Order 11988 federal agencies are required to "provide leadership to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains \* \* \*" See section 1 of E.O. 11988. Under Executive Order 11990 federal agencies are required to "provide leadership and \* \* \* take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities \* \* \*" See section 1 of E.O. 11990. The requirements of these Executive Orders apply in the context of the provision of federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting federal programs affecting land use.

Most of the activities that FEMA will carry out pursuant to section 408 of the Stafford Act and these regulations will not involve either providing federal financial assistance relating to construction and property improvements or conducting federal programs that will affect land use. We anticipate that much of the housing assistance we will provide in the context of major disasters which are declared by the President after May 1, 2002, will be in the form of funds to rent alternative accommodations while victims' pre-disaster residences are being repaired. See subsection 408(c)(1)(A)(i). A substantial portion of the housing assistance we will provide when this rule becomes effective will be in the form of funding to repair residences which have been damaged by major disasters. See subsection 408(c)(2). These types of construction activities are not the type, which typically trigger the application of the Executive Orders. Finally, the majority of the needs that will be addressed under subsection 408(e) of the Stafford Act relate to replacement of personal property and to medical, dental, and



funeral expenses. These forms of financial assistance do not trigger the Executive Orders either. See 44 CFR 9.5(c)(8)–(11), which describe FEMA's interpretation of this issue under the pre-existing versions of sections 408 and 411 of the Stafford Act.

Nevertheless, there are certain activities that are authorized by the revised version of section 408 of the Act and this rule that may trigger the requirements of the Executive Orders. For example, the use of federal funds to construct housing pursuant to subsections 408(c)(3) and (4) could trigger the process described in the Executive Orders and FEMA's implementing regulation, which appears at 44 CFR part 9. In addition, if federal funds were used pursuant to subsection 408(d)(1) to construct group sites for the placement of mobile homes or readily fabricated dwellings for the use of disaster victims, FEMA would follow the process described in the Executive Orders and our implementing regulation.

#### **Executive Order 13132, Federalism**

Executive Order 13132 sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this proposed rule under Executive Order 13132 and have determined that the rule does not have "substantial direct effects on the States" and therefore does not have the type of federalism implications contemplated by the Executive Order. While the draft rule contemplates the possible optional involvement of States in the implementation of portions of the activities authorized by amended section 408 of the Stafford Act, it is also clear that the revised statutory provision anticipates that FEMA will have a leadership role in overseeing the implementation of the overall program. We can foresee no way that the rule would affect significantly the distribution of power and responsibilities among the various levels of government or limit the policymaking discretion of the States.

In addition, we have consulted with State and local representatives in the development of the proposed rule. Our consultations included discussions with various State Emergency Management Directors at meetings in: (1) St. Louis, Missouri, in January 2001; (2) at a conference of the National Emergency Management Association (NEMA) in Arlington, Virginia, in February 2001; and (3) at a NEMA Response and Recovery Subcommittee meeting in April 2001. We also held discussions with the local emergency management directors at a meeting with the International Association of Emergency Managers in Emmitsburg, Maryland on April 3, 2001. Further, we held a meeting for the national associations and organizations that represent State and local officials in Washington, DC on April 26, 2001, in order to describe and discuss the issues and programs involved in this proposed rule. Also in attendance at the briefing were Governors' Washington, DC representatives. In summary, based on our extensive consultations with representatives of a number of States, and based on our determination that the proposed rule will not have "substantial direct effects on the States", we believe that the publication of this proposed rule is consistent with the terms of Executive Order 13132. We invite comment from State and local officials on this important issue.

#### **Executive Order 12898, Environmental Justice**

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations", 59 FR 7629, February 16, 1994, we incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefits of, or subjecting persons to discrimination because of their race, color, or national origin. No action that we can anticipate under the proposed rule will have a disproportionately high and adverse human health effect on any segment of the population. In addition, the proposed rule does not impose substantial direct compliance costs on those communities. Accordingly, the requirements of the Executive Order do not apply to this proposed rule.

#### **Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

Under Executive Order 13175, FEMA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal government or we consult with those governments. If FEMA complies by consulting, Executive Order 13175 requires us to provide to the Office of Management and Budget a description of the extent of our prior consultations with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires us to provide to the Director of OMB a tribal summary impact statement describing the extent of our prior consultation with tribal officials, the nature of their concerns, and our position supporting the need to issue the regulation, and a statement of the extent to which we have met the concerns of tribal officials.

The Disaster Mitigation Act of 2000 requires this proposed rule. We have not consulted with Indian tribal officials, grounded on our belief that this proposed rule will not significantly and uniquely affect the communities of Indian tribal governments. Nor will the rule impose substantial direct compliance costs on those communities. Accordingly, the requirements of Executive Order 13175 do not apply in the context of this proposed rule.

#### **List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Community facilities, Disaster Assistance, Grant programs, Loan programs, Reporting and recordkeeping requirements.

Accordingly, amend 44 CFR part 206 as follows:

1. The authority citation of Part 206 continues to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943; 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Revise Subpart D as follows and remove Subpart E.



## Subpart D—Federal Assistance to Individuals and Households

Sec.

- 206.101 Federal assistance to individuals and households.
- 206.102 Definitions.
- 206.103 Registration period.
- 206.104 Eligibility factors.
- 206.105 Criteria for continued assistance.
- 206.106 Appeals.
- 206.107 Recovery of funds.
- 206.108 Housing assistance.
- 206.109 Disposal of housing units.
- 206.110 Financial assistance to address other needs.
- 206.111 State Participation in the Section 408 Program.

## Subpart D—Federal Assistance to Individuals and Households

### § 206.101 Federal Assistance to Individuals and Households.

(a) *Purpose.* This section implements the policy and procedures set forth in section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5174. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster, have uninsured or underinsured, necessary expenses and serious needs and are unable to meet such expenses or needs through other means.

(b) *Maximum amount of assistance.* No individual or household will receive financial assistance greater than \$25,000 under this subpart with respect to a single major disaster. FEMA will adjust the \$25,000 limit annually to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers that the Department of Labor publishes.

(c) *Multiple types of assistance.* One or more types of housing assistance may be made available under this section to meet the needs of individuals and households in the particular disaster situation. FEMA shall determine the appropriate types of housing assistance to be provided under this section based on considerations of cost effectiveness, convenience to the individuals and households and the suitability and availability of the types of assistance. An applicant is expected to accept the first offer of housing assistance; unwarranted refusal of assistance may result in the forfeiture of future housing assistance. Temporary Housing and Repair assistance shall be utilized to the fullest extent practicable before other types of housing assistance.

(d) *Date of eligibility.* Eligibility for Federal assistance under this subpart will begin on the date of the incident that results in a presidential declaration that a major disaster exists, except that reasonable expenses that are incurred in

anticipation of and immediately preceding such event may be eligible for Federal assistance under this chapter.

(e) *Period of assistance.* FEMA may provide assistance under this subpart for a period not to exceed 18 months from the date of declaration. The Associate Director (AD) may extend this period if he/she determines that due to extraordinary circumstances an extension would be in the public interest.

(f) *Assistance not counted as income.* Assistance under this subpart is not to be counted as income or a resource in the determination of eligibility for welfare, income assistance or income-tested benefit programs that the Federal Government funds.

(g) *Exemption from garnishment.* All assistance provided under this subpart is exempt from garnishment, seizure, encumbrance, levy, execution, pledge, attachment, release or waiver. Recipients of rights under this provision may not reassign or transfer the rights.

(h) *Duplication of benefits.* In accordance with the requirements of section 312 of the Stafford Act, 42 U.S.C. 5155, FEMA will not provide assistance under this subpart when any other source has already provided such assistance or when such assistance is available from any other source. In the instance of insured applicants, we will provide assistance under this subpart only when:

- (1) Payment of the applicable benefits are significantly delayed;
- (2) Applicable benefits are exhausted;
- (3) Applicable benefits are insufficient to cover the housing need; or
- (4) Housing is not available on the private market.

(i) *Cost sharing.* (1) Except as provided in paragraph (h)(2) of this section, the Federal share of eligible costs paid under this subpart shall be 100 percent.

(2) Federal and State cost shares for assistance under § 206.110 will be as follows;

- (i) The Federal share will be 75 percent; and
- (ii) The State will pay the 25 percent non-Federal share from funds that the State makes available.

(j) *Application of the Privacy Act.* (1) All provisions of the Privacy Act of 1974, 5 U.S.C. 552a, apply to this subpart. FEMA may not disclose an applicant's record except in response to:

- (i) A release signed by the applicant that specifies the purpose for the release, to whom the release is to be made, and who authorizes the release;
- (ii) In accordance with one of the published routine uses in our system of records; or

(iii) As provided in paragraph (i)(2) of this section.

(2) Under section 408(f)(2) of the Stafford Act, 42 U.S.C. 5174(f)(2), FEMA must share applicant information with States in order for the States to make available any additional State and local disaster assistance to individuals and households.

(i) States receiving applicant information under this paragraph must protect such information in the same manner that the Privacy Act requires FEMA to protect it.

(ii) States receiving such applicant information must not disclose the information further to other entities, nor must they use it for purposes other than providing additional State or local disaster assistance to individuals and households.

(k) *Flood Disaster Protection Act requirement.* (1) The Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended (42 U.S.C. section 4106), imposes certain restrictions on federal financial assistance for acquisition and construction purposes. For the purpose of this paragraph, *financial assistance for acquisition or construction purposes* means a grant to an individual or household to buy, receive, build, repair or improve insurable portions of a home and/or to purchase or repair insurable contents. For a discussion of what elements of a home and contents are insurable, see 44 CFR part 61, Insurance Coverage and Rates.

(2) Individuals or households may not receive Federal Assistance grants for real and/or personal property that is located in a special flood hazard area, see § 59.1 of this title. However, if the community in which the damaged property is located is participating in the National Flood Insurance Program (NFIP), then individuals and households can receive assistance. If a community qualifies for and enters the National Flood Insurance Program during the 6-month period following the declaration, the Governor's Authorized Representative (GAR) may request a time extension from FEMA (see § 206.103) to accept registrations and to process grant applications in that community.

(3) Flood insurance purchase requirement:

(i) Individuals and households named by FEMA as eligible recipients under section 408 of the Stafford Act who receive a grant, due to flood damages, for acquisition or construction purposes under this subpart must buy and maintain flood insurance, as required in 42 U.S.C. 4012a, for at least the grant amount, in order to get any Federal assistance for future flood damage to

any insurable property. This applies only to real and personal property that is in or will be in a designated Special Flood Hazard Area and that can be insured under the National Flood Insurance Program.

(A) If the grantee is a homeowner, flood insurance coverage must be maintained on the structure at the flood-damaged property address for as long as the address exists. The flood insurance requirement is reassigned to any subsequent owner of the flood-damaged structure.

(B) If the grantee is a renter, flood insurance coverage must be maintained on the contents for as long as the renter resides at the flood-damaged rental unit. The restriction is lifted once the renter moves from the rental unit.

(ii) FEMA may not provide financial assistance for acquisition or construction purposes to individuals or households who fail to buy and maintain flood insurance required under paragraph (k)(3)(i) of this section.

(l) *Citizenship requirement.* (1) Under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193), FEMA may only provide assistance under this subpart to applicants who are:

(i) *U.S. Citizens*—born in the United States, derivative citizens, or naturalized citizens;

(ii) *Non-Citizen Nationals*—generally, persons born in certain outlying possessions of the United States, or a person whose parents are U.S. non-citizen nationals (subject to certain residency requirements); or

(iii) *Qualified Aliens*—this category generally includes individuals who are Lawful Permanent residents (possessing an alien registration receipt card, sometimes referred to as a “Green Card”) or those with legal status provided in Pub. L. 104–193 (admission into the U.S. for humanitarian purposes).

(2) For purposes of this subpart, the citizenship requirements listed in this paragraph do not apply to citizens of the Federated States of Micronesia (FSM) and the Republic of the Marshall Islands (RMI) when residing in the FSM or RMI at the time a declared major disaster or emergency impacts this area. However, the requirements of this paragraph continue to apply to such citizens when an event affects them while residing outside FSM or RMI.

#### § 206.102 Definitions.

*Adequate, alternate housing* means housing that: Accommodates the needs of the occupants; is within the normal commuting patterns of the area or is within reasonable commuting distance

of work, school, or agricultural activities that provide over 50 percent of the household income; and is within the financial ability of the occupant in the realization of a realistic permanent housing plan.

*Alternative housing resources* means any housing that is available or can quickly be made available in lieu of permanent housing construction and is cost-effective when compared to permanent construction costs. Some examples are rental resources, mobile homes and travel trailers.

*Applicant* means an individual or household who has applied for assistance under this subpart.

*Assistance from other means* includes monetary or in-kind contributions from voluntary or charitable organizations, insurance, other governmental programs, or from any sources other than those of the applicant.

*Dependent* means someone who is normally claimed as such on the Federal tax return of another, according to the Internal Revenue Code. It may also mean the minor children of a couple not living together, where the children live in the affected residence with the parent or guardian who does not actually claim them on the tax return.

*Displaced applicant* means one whose primary residence is uninhabitable, inaccessible, required by the landlord or not functional as a direct result of the disaster and has no other housing available in the area, i.e., a secondary home or vacation home.

*Effective date of assistance* means the date that the applicant was determined eligible for assistance.

*Eligible hazard mitigation measures* are home improvements that an applicant can accomplish in order to reduce or prevent future disaster damages to essential components of the home.

*Fair market rent* means housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The fair market rent rates applied are those identified by the Department of Housing and Urban Development as being adequate for existing rental housing in a particular area.

*Financial ability* means the capability of the applicant to pay the housing costs on a permanent basis. The determination is based on 30 percent of the post-disaster household income. At the discretion of FEMA, extreme or unusual financial circumstances may be considered when computing financial ability.

*Financial assistance* means a cash grant that may be provided to eligible individuals and households, usually in the form of a check or electronic funds transfer.

*Functional* means an item or home capable of being used for its intended purpose.

*Household* means all persons (adults and children) who lived in the pre-disaster residence who request assistance under this subpart, plus any additions during the assistance period, such as infants, spouse, or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period.

*Housing costs* means rent and mortgage payments, including principal, interest, real estate taxes, real property insurance, and utility costs.

*Inaccessible* means as a result of the incident, the applicant cannot reasonably be expected to gain entry to his or her pre-disaster residence due to the disruption, or destruction, of access routes or other impediments to access, or restrictions placed on movement by a responsible official due to continued health or safety problems.

*Individuals* mean all persons living in a household who are not dependents.

*In-kind contributions* mean something other than monetary assistance, such as goods, commodities or services.

*Manufactured housing sites* means those sites used for the placement of government or privately owned mobile homes, travel trailers, and other manufactured housing units, including:

(1) *Commercial Site*, a site customarily leased for a fee, which is fully equipped to accommodate a housing unit;

(2) *Private Site*, a site that the applicant provides or obtains at no cost to the Federal Government, complete with utilities; and

(3) *Group Site*, a site provided by the State that accommodates two or more units and is complete with utilities.

*Necessary expense* means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

*Occupant* means a resident of a housing unit.

*Owner-occupied* means that the residence is occupied by:

(1) The legal owner;

(2) A person who does not hold formal title to the residence and pays no rent, but is responsible for the payment of taxes or maintenance of the residence; or

(3) A person who has lifetime occupancy rights with formal title vested in another.

*Permanent housing plan* means a realistic plan that, within a reasonable timeframe, puts the disaster victim back into permanent housing that is similar to the victim's pre-disaster housing situation. A reasonable timeframe includes sufficient time for securing funds, locating a permanent dwelling, and moving into the dwelling.

*Primary residence* means the dwelling where the applicant normally lives, during the major portion of the calendar year, or the dwelling that is required because of proximity to employment, including agricultural activities, that provide 50 percent of the household's income.

*Reasonable commuting distance* means a distance that does not place undue hardship on an applicant. It also takes into consideration the traveling time involved due to road conditions, e.g., mountainous regions or bridges out and the normal commuting patterns of the area.

*Safe* means secure from disaster-related hazards or threats to occupants.

*Sanitary* means free of disaster-related health hazards.

*Serious need* means the requirement for an item, or service, that is essential to an applicant's ability to prevent, mitigate, or overcome a disaster-related hardship, injury or adverse condition.

*Uninhabitable*—means the dwelling is not safe, sanitary or fit to occupy.

*We, our, or us* mean FEMA.

#### **§ 206.103 Registration Period.**

(a) *Initial period.* The standard FEMA registration period is 60 days following the date that the President declares an incident a major disaster or an emergency.

(b) *Extension of the registration period.* The Regional Director or his/her designee may extend the registration period when the State requests more time to collect registrations from the affected population. The Regional Director or his/her designee may also extend the standard registration period when necessary to establish the same registration deadline for contiguous counties or States.

(c) *Late registrations.* After the standard or extended registration period ends, FEMA will accept late registrations for an additional 60 days. We will process late registrations for those registrants who provide suitable documentation to support and justify the reason for the delay in their registration.

#### **§ 206.104 Eligibility Factors.**

(a) *Conditions of eligibility.* In general, FEMA may provide assistance to individuals and households who qualify

for such assistance under section 408 of the Stafford Act and this subpart. FEMA may only provide assistance:

(1) When the individual or household meets citizenship requirements defined in § 206.101(l);

(2) When the individual or household has incurred a necessary expense or serious need in the disaster area, without regard to their residency in the area, within the State in which the President has declared an emergency or major disaster;

(3) In a situation where the applicant has insurance, when the individual or household files a claim with their insurance provider for all potentially applicable types of insurance coverage and is denied;

(4) In a situation where the applicant has insurance, when the insured individual or household's insurance proceeds have been significantly delayed through no fault of his, her or their own, and the applicant has agreed to repay the assistance to FEMA or the State from insurance proceeds that he, she or they receive later; the insurance proceeds are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs; or when housing is not available on the private market;

(5) When the individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance;

(6) When the applicant agrees to refund to FEMA or the State any portion of the grant that the applicant receives or is eligible to receive as assistance from another source;

(7) With respect to housing assistance, if the primary residence has been destroyed, is uninhabitable, or is inaccessible; and

(8) With respect to housing assistance, if a renter's rental unit is no longer available;

(b) *Conditions of ineligibility.* We may not provide assistance under this subpart:

(1) For housing to individuals or households who are displaced from other than their pre-disaster primary residence;

(2) For housing to individuals or households who have adequate rent-free housing accommodations;

(3) For housing to individuals or households who own a secondary or vacation residence within reasonable commuting distance to the disaster area, or who own unoccupied rental property that meets their temporary housing needs;

(4) For housing to individuals or households who evacuated the residence in response to official warnings solely as a precautionary measure and who are able to return to the residence immediately after the incident;

(5) For housing for improvements or additions to the pre-disaster condition of property, except those required to comply with local and State ordinances or eligible mitigation measures;

(6) To individuals or households who have adequate insurance coverage and where there is no indication that insurance proceeds will be delayed, or who have refused assistance from insurance providers;

(7) To individuals or households whose damaged primary residence is located in a designated special flood hazard area, and in a community that is not participating in the National Flood Insurance Program, except that financial assistance may be provided to rent alternate housing and for medical, dental and funeral expenses to such individuals or households;

(8) For business losses, including farm businesses and self-employment; or

(9) For any items not otherwise authorized by this section.

#### **§ 206.105 Criteria for Continued Assistance.**

(a) FEMA expects all recipients of assistance under this subpart to obtain and occupy permanent housing at the earliest possible time. FEMA may provide continued Housing assistance up to 18 months, based on need, and generally only when adequate, alternate housing is not available or when the permanent housing plan has not been fulfilled through no fault of the applicant.

(b) *Additional Criteria for Continued Assistance:*

(1) All applicants requesting continued rent assistance must establish a realistic permanent housing plan no later than the first certification for continued assistance. Applicants will be required to provide documentation showing that they are making efforts to obtain permanent housing.

(2) Applicants requesting continued rent assistance must submit rent receipts to show that they have exhausted the FEMA rent funds.

(3) FEMA generally expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, we may certify them for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(4) FEMA may certify pre-disaster owners for continued rent assistance when adequate, alternate housing is not available, or when they have not realized a permanent housing plan through no fault of their own.

(5) Individuals or households requesting additional assistance for personal property, transportation, medical, dental, funeral, moving and storage, or other necessary expenses and serious needs will be required to submit information and/or documentation identifying the continuing need.

#### **§ 206.106 Appeals.**

(a) Under the provisions of section 423 of the Stafford Act, applicants for assistance under this subpart may appeal any determination of eligibility for assistance made under this subpart. Applicants must file their appeal within 60 days after the date that we notify the applicant of the award or denial of assistance. Applicants may appeal the following:

- (1) Eligibility for assistance, including recoupment;
- (2) Amount or type of assistance;
- (3) Cancellation of an application;
- (4) The rejection of a late application;
- (5) The denial of continued assistance under section 206.105, Criteria for Continued Assistance;
- (6) FEMA's intent to collect rent for occupants of a housing unit that FEMA provides;
- (7) Termination of direct housing assistance;
- (8) Denial of a request to purchase a FEMA-provided housing unit at the termination of eligibility;
- (9) The sales price of a FEMA-provided housing unit they want to purchase; or
- (10) Any other eligibility-related decision.

(b) Appeals must be in writing and explain the reason(s) for the appeal. The applicant or person who the applicant authorizes to act on his or her behalf must sign the appeal. If someone other than the applicant files the appeal, then the applicant must also submit a signed statement giving that person authority to represent him, her or them.

(c) Applicants must appeal to the Regional Director or his/her designee for decision made under this subpart, except when FEMA has made a grant to the State to provide assistance to individuals and households under § 206.111(a), State Administration of Other Needs Program.

(d) An applicant may ask for a copy of information in his/her or their file by writing to FEMA or the State. If someone other than the applicant is submitting the request, then the

applicant must also submit a signed statement giving that person authority to represent him, her, or them.

(e) The appropriate FEMA or State program official will notify the applicant in writing of the receipt of the appeal.

(f) The Regional Director or his/her designee or appropriate State official will review the original decision after receiving the appeal. FEMA or the State will give the appellant a written notice of the disposition of the appeal within 90 days of the receiving the appeal. The decision of the appellate authority is final.

#### **§ 206.107 Recovery of Funds.**

(a) The applicant must agree to repay to FEMA or the State from insurance proceeds or recoveries from any other source an amount equivalent to the value of the assistance provided. In no event must the amount repaid to FEMA exceed the amount that the applicant recovers from insurance or any other source.

(b) An applicant must return funds to FEMA or the State when FEMA or the State determines that FEMA or the State made the grant erroneously, the applicant spent the money inappropriately, or the applicant obtained the grant through fraudulent means.

(c) If FEMA has approved a grant to the State to provide assistance under section 206.110, then the State must return to FEMA 75 percent of all funds recovered by the State from applicants. FEMA will return to the State 25 percent of all funds recovered from applicants under § 206.110 when FEMA administers the program.

#### **§ 206.108 Housing Assistance.**

(a) *Purpose.* FEMA may provide financial or direct assistance under this section to respond to the disaster-related housing needs of individuals and households.

(b) *Types of housing assistance—(1) Temporary housing assistance—(i) Financial assistance.* Eligible individuals and households may receive financial assistance to rent alternate housing resources, existing rental units, manufactured housing, recreational vehicles or other readily fabricated dwellings. In addition, FEMA may provide assistance for the reasonable cost of any transportation, utility hookups, or installation of a manufactured housing unit or recreational vehicle to be used for housing and reasonable lodging expenses incurred because of the disaster.

(A) We will include all members of a pre-disaster household in a single registration and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(B) FEMA will base the rental assistance on the Department of Housing and Urban Development's current fair market rates for existing rental units. FEMA will further base the applicable rate on the household's bedroom requirement and the location of the rental unit.

(C) The occupant is responsible for all utility costs and security deposits, except where the utility does not meter services separately and utilities are a part of the rental charge. The Regional Director or his/her designee may authorize the payment of security deposits; however, the owner or occupant must reimburse the full amount of the security deposit to the Federal Government before or at the time that the temporary housing assistance ends.

(ii) *Direct assistance.* (A) FEMA may provide direct assistance in the form of purchased or leased temporary housing units directly to individuals or households who lack available housing resources and would be unable to make use of the assistance provided under paragraph (b)(1)(i) of this section.

(B) FEMA will include all members of a household in a single application and will provide assistance for one temporary housing residence, unless the Regional Director or his/her designee determines that the size or nature of the household requires that we provide assistance for more than one residence.

(C) Any site upon which a FEMA-provided housing unit is placed must comply with applicable State and local codes and ordinances, as well as 44 CFR part 9, Floodplain Management and Protection of Wetlands, and Part 10, Environmental Considerations.

(D) All utility costs and security deposits are the responsibility of the occupant except where the utility does not meter utility services separately and utility services are a part of the rental charge.

(E) FEMA-provided housing units may be placed in the following locations:

(1) A commercial site that is complete with utilities; when the Regional Director or his/her designee determines that the upgrading of commercial sites, or installation of utilities on such sites, will provide more cost-effective, timely and suitable temporary housing than

other types of resources, then Federal assistance may be authorized for such actions.

(2) A private site that an applicant provides, complete with utilities; when the Regional Director or his/her designee determines that the cost of installation or repairs of essential utilities on private sites will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(3) A group site the State or local government provides that accommodates two or more units and is complete with utilities; when the Regional Director or his/her designee determines that the cost of developing a group site provided by the State or local government, to include installation or repairs of essential utilities on the sites, will provide more cost effective, timely, and suitable temporary housing than other types of resources, then Federal assistance may be authorized for such actions.

(4) A group site provided by FEMA, if the Regional Director or his/her designee determines that such a site would be more economical or accessible than one that the State or local government provides.

(F) At the end of the 18-month period of assistance, FEMA may charge up to the fair market rent rate for each temporary housing unit provided. We will base the rent charged on the number of bedrooms occupied and needed by the household. When establishing the amount of rent, FEMA will take into account the financial ability of the household.

(G) We may terminate direct assistance for reasons that include, but are not limited to, the following:

(1) The period of assistance expired under § 206.101(d) and has not been extended;

(2) Adequate alternate housing is available to the occupant(s);

(3) The occupant obtained housing assistance either through misrepresentation or fraud;

(4) The occupant failed to comply with any term of the lease/rental agreement or other rules of the site where the unit is located.

(5) The occupant does not provided documentation showing that they are working towards the permanent housing plan

(H) FEMA will provide written notice when initiating the termination of any assistance that we provide under our lease agreements. This notice will specify the reasons for termination of assistance and occupancy, the date of termination, the procedure for appealing

the determination, and the occupant's liability for such additional charges as the Regional Director or his/her designee deems appropriate after the termination date, including fair market rent for the unit.

(I) Duplication of benefits may occur when an applicant has additional living expense insurance benefits to cover the cost of renting alternate housing. In these instances, FEMA may provide a temporary housing unit if adequate alternate housing is not available, or if doing so is in the best interest of the household and the government. We will establish fair market rent, not to exceed insurance benefits available.

(2) *Repairs.* (i) FEMA may provide financial assistance for the repairs of uninsured disaster-related damages to an owner's primary residence. The funds are to help return owner-occupied primary residences to a safe and sanitary living or functioning condition. Repairs may include utilities and residential infrastructure (such as private access routes, wells and/or septic systems) damaged by a major disaster.

(ii) The type of repair FEMA authorizes may vary depending upon the nature of the disaster. We may authorize repair of items where feasible or replacement when necessary to insure the safety or health of the occupant and to make the residence functional.

(iii) FEMA may also provide assistance for eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities or infrastructure.

(iv) Eligible individuals or households may receive up to \$5,000 under this paragraph, adjusted annually to reflect changes in the CPI, to repair damages to their primary residence without first having to show that the assistance can be met through other means, except insurance proceeds.

(v) The individual or household is responsible for obtaining local permits or inspections that applicable State or local building codes may require.

(3) *Replacement.* FEMA may provide financial assistance under this paragraph to replace a disaster-damaged owner's occupied, primary residence if the dwelling can be replaced, in its entirety, for \$10,000 or less, as adjusted annually to reflect changes in the CPI.

(4) *Permanent housing construction.* FEMA may provide financial or direct assistance to applicants for the purpose of constructing permanent housing in insular areas outside the continental United States and in other remote locations when alternative housing resources are not available and the types

of financial or direct temporary housing assistance described in paragraph (b)(1) of this section are unavailable, infeasible, or not cost-effective.

(c) *Eligible costs.* (1) Repairs to the primary residence or replacement of items must be disaster-related and must be of average quality, size, and capacity, taking into consideration the needs of the occupant. Repairs to the primary residence are limited to restoration of the dwelling to a safe and sanitary living or functioning condition and may include:

(i) Repair or replacement of the structural components, including foundation, exterior walls, and roof;

(ii) Repair or replacement of the structure's windows and doors;

(iii) Repair or replacement of the structure's Heating, Ventilation and Air Conditioning System;

(iv) Repair or replacement of the structure's utilities, including electrical, plumbing, gas, water and sewage systems;

(v) Repair or replacement of the structure's interior, including floors, walls, ceilings, doors and cabinetry;

(vi) Repair to the structure's access and egress, including privately owned access road;

(vii) Blocking, leveling, and anchoring of a mobile home, and reconnecting or resetting mobile home sewer, water, electrical and fuel lines and tanks; and

(viii) Items or services determined to be eligible hazard mitigation measures.

(2) Permanent Housing Construction, in general, must be consistent with current minimal local building codes and standards where they exist, or minimal acceptable construction industry standards in the area. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

#### **§ 206.109 Disposal of Housing Units.**

(a) FEMA may sell housing units purchased under § 206.108(b)(1)(ii), Temporary Housing, Direct Assistance, as follows:

(1) Sale to an applicant.

(i) Sale to the individual or household occupying the unit, if the occupant lacks permanent housing, has a site that complies with local codes and ordinances and Part 9 of this Title.

(ii) Adjustment to the sales price.

(A) FEMA may approve adjustments to the sales price when selling a housing unit to the occupant of a unit, if the purchaser's financial resources are less than the fair market value of the home or unit, and when doing so is in the best interest of the applicant and FEMA.

(iii) We will deposit the proceeds of a sale under paragraph (a)(1) of this

section in the appropriate Disaster Relief Fund account.

(iv) FEMA may sell a housing unit to an individual or household only on the condition that the purchaser agrees to obtain and maintain hazard insurance, as well as flood insurance on the unit if it is or will be in a designated Special Flood Hazard Area.

(2) Other methods of disposal:

(i) FEMA may sell, transfer, donate, or otherwise make a unit available directly to a State or other governmental entity, or to a voluntary organization, for the sole purpose of providing temporary housing to disaster victims in major disasters and emergencies. As a condition of the sale, transfer, or donation, or other method of provision, the State, governmental entity, or voluntary organization must agree to:

(A) Comply with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151; and  
(B) Obtain and maintain hazard insurance on the unit, as well as flood insurance if the housing unit is or will be in a designated Special Flood Hazard Area.

(ii) FEMA may also sell housing units at a fair market value to any other person.

(b) A unit will be sold "as is, where is", except for repairs FEMA deems necessary to protect health or safety, which are to be completed before the sale. There will be no implied warranties. In addition, FEMA will inform the purchaser that he/she may have to bring the unit up to codes and standards that are applicable at the proposed site.

#### **§ 206.110 Financial Assistance to Address Other Needs.**

(a) *Purpose.* FEMA and the State may provide financial assistance to individuals and households who have other disaster-related necessary expenses or serious needs. To qualify for a grant under this section, an applicant must also:

(1) Apply to the United States Small Business Administration's (SBA) Disaster Home Loan Program for all available assistance under the program; and

(2) Be declined for SBA Disaster Home Loan Program assistance; or

(3) Demonstrate that the SBA assistance received does not satisfy their total necessary expenses or serious needs arising out of the major disaster.

(b) *Types of assistance.*—(1) *Medical, dental, and funeral expenses.* FEMA may provide financial assistance for medical, dental and funeral items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(2) *Personal property, transportation, and other expenses.* (i) FEMA may provide financial assistance for personal property and transportation items or services to meet the disaster-related necessary expenses and serious needs of individuals and households.

(ii) FEMA may provide financial assistance for other items or services that are not included in the specified categories for other assistance but which FEMA approves, in coordination with the State, as eligible to meet unique necessary expenses and serious needs of individuals and households.

(c) *Eligible costs.*—(1) *Personal property.* Necessary expenses and serious needs for repair or replacement of personal property are generally limited to the following:

- (i) Clothing;
- (ii) Household items, furnishings or appliances;
- (iii) Tools, specialized or protective clothing, and equipment required by an employer as a condition of employment;
- (iv) Computers, uniforms, schoolbooks and supplies required for educational purposes; and
- (v) Cleaning or sanitizing any eligible personal property item.

(2) *Transportation.* Necessary expenses or serious needs for transportation are generally limited to the following:

- (i) Repairing or replacing vehicles; and
- (ii) Financial assistance for public transportation and any other transportation related costs or services.

(3) *Medical expenses.* Medical expenses are generally limited to the following:

- (i) Medical costs;
- (ii) Dental costs; and
- (iii) Repair or replacement of medical equipment.

(4) *Funeral expenses.* Funeral expenses are generally limited to the following:

- (i) Funeral services;
- (ii) Burial or cremation; and
- (iii) Other related funeral expenses.

(5) *Moving and storage expenses.* Necessary expenses and serious needs related to moving and storing personal property away from the threat of damage including the evacuation, storage, and return of the personal property to the individual or household's place of residence.

(6) *Other.* Other disaster-related expenses not addressed in the above categories may include:

- (i) Costs of towing, setup, and connecting or reconnecting essential utilities for an owner-occupied manufactured housing unit not provided by FEMA; and

(ii) Other miscellaneous items or services that FEMA, in consultation with the State, determines are necessary expenses and serious needs.

#### **§ 206.111 State Participation in the Section 408 Program.**

(a) *State Administration of Other Needs Program.* A State may request a grant from FEMA to provide financial assistance to individuals and households in the State under § 206.110 of this subpart. The total Federal grant under this paragraph will be equal to 75 percent of the cost of meeting necessary expenses or serious needs of individuals and households, plus State administrative costs not to exceed 5 percent of the Federal grant. Any State that administers the program to provide financial assistance to individuals and households must administer the program consistent with § 206.110 of this subpart and under the Memorandum of Understanding that we describe at paragraph (c) of this section.

(b) *State Participation in the Management of the Temporary Housing-Direct Assistance Program.* A State may request authority to participate in the management of the Temporary Housing-Direct Assistance Program that we describe at § 206.108(b)(1)(ii) of this subpart. The total Federal cost under this paragraph will be 100 percent. The Regional Director or his/her designee may approve such a request if State participation in the management of the program would be in the best interest of the Federal government and those needing housing assistance.

(1) Any State that participates in the management of a Temporary Housing-Direct Assistance Program must do so consistent with § 206.108(b)(1)(ii) of this subpart and under the Memorandum of Understanding that we describe at paragraph (c) of this section;

(2) Before a State may participate in the management of the Temporary Housing-Direct Assistance Program, the State must agree to hold and save the United States free from damages and indemnify the Federal Government against any claims arising from the Temporary Housing-Direct Assistance Program;

(3) The State may perform one or more of the following activities in the course of its participation in the management of the Temporary Housing-Direct Assistance Program:

- (i) Site assessment;
- (ii) Unit procurement and installation;
- (iii) Unit maintenance;
- (iv) Staging operations;
- (v) Group site design and development;

(vi) Occupant Services (Leasing in and certifying occupants for continuing assistance); and

(vii) Site Restoration.

(c) *FEMA-State Memorandum of Understanding*. The delivery of assistance by a State under this section is contingent upon and governed by a FEMA-State Memorandum of Understanding (MOU), which describes the partnership between FEMA and the State for the delivery of assistance under section 408 of the Stafford Act, 42 U.S.C. 5174.

(1) General. The MOU explains the roles and responsibilities of FEMA and

the State in the provision of assistance by the State under this section;

(2) The Regional Director and the Governor or designee will execute the MOU, which they will renew annually. The effective date of each year's MOU will be January 1, and each executed MOU will be effective for one year. FEMA and the State may amend executed MOUs during the course of a year.

(3) If both parties do not execute an MOU by January 1, FEMA will administer all assistance under this section for that calendar year.

(4) The MOU will include provisions relating to the need for the State to

comply with this section and the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including parts 11 and 13 of this title.

(5) The MOU will include provisions for State compliance with the nondiscrimination provisions of the Stafford Act, 42 U.S.C. 5151.

Dated: January 15, 2002.

**Michael D. Brown,**

*Acting Deputy Director.*

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