



Federal Register

**Monday,
September 30, 2002**

Part IV

Federal Emergency Management Agency

44 CFR Parts 61 and 206

**Disaster Assistance; Federal Assistance to
Individuals and Households; and National
Flood Insurance Program (NFIP); Group
Flood Insurance Program (GFIP); Final
Rules**

**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: Interim final rule.

SUMMARY: This interim final rule implements subsection 206(a) 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 provision of assistance to disaster victims.

DATES: *Effective Date:* This rule is effective on September 30, 2002.

Applicability Date: This rule applies to Emergencies and Major Disasters declared on or after October 15, 2002.

Comment Date: Please submit written comments on or before April 15, 2003.

ADDRESSES: Please send any comments 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 (e-mail) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hirsch; Response and Recovery Directorate; (202) 646-4099, or (e-mail) at *Michael.Hirsch@fema.gov*, or Lumumba Yancey, Response and Recovery Directorate, (202) 646-3939, or (e-mail) at *Lumumba.Yancey@fema.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the enactment of subsection 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 ("the Stafford Act") what previously had been two separate provisions. The first is the previous 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." This consolidation of sections 408 and 411 of the Stafford Act becomes effective on October 15, 2002.

When we published the proposed rule to implement the new Individuals and Households Program ("IHP") authority, we solicited comments on a wide

variety of issues. In response we have received comments from twenty States, as well as the National Emergency Management Agency (NEMA), the International Association of Emergency Managers (IAEM), and one local government. Many of the comments we received expressed similar reactions to the issues which were raised in the proposed rule. In addition, we received a number of comments on the concept of a Memorandum of Understanding which we had planned to use in the course of our implementation of the new IHP program. This Supplementary Information discussion describes the comments we received on the proposed rule, as well as the decisions we made in response to the public's input. To facilitate a review of the comments and our decision-making, the balance of this discussion is divided under headings that describe the various issues that this rulemaking raises.

FEMA v. State Administration of IHP

Even before FEMA published the proposed IHP rule, a number of States had expressed a desire to actively participate in the administration of IHP. We identified this as a significant issue when we published the proposed rule, and most of the States that provided comments addressed this issue.

Although one commenter expressed the belief that IHP would function most efficiently if FEMA was consistently responsible for the implementation of the entire program, a substantial majority of the commenters felt that the IHP process should provide States with opportunities to be active partners in the administration of the new program. Virtually all of the States expressed approval of FEMA's willingness to provide four different options for the implementation of the "Other Needs" assistance that is authorized by subsections 408(e) and (f) of the Stafford Act, 42 U.S.C. 5174(e) and (f). These options ranged from a program which is administered exclusively by FEMA, to one that is administered by FEMA with substantial State involvement, to one that is administered by the State with substantial FEMA assistance, to a final option pursuant to which the State would administer the entire "Other Needs" assistance with minimal FEMA participation. See 206.120 of the interim final rule. Several commenters questioned whether FEMA is authorized to reimburse State administrative costs when FEMA is administering the program with State involvement in the program. These comments are based on the fact that subsection 408(f) of the Stafford Act explicitly authorizes FEMA to make grants to cover State "Other

Needs" administrative expenses only when the States is administering the program. We have determined that because there is no explicit authority for FEMA to provide reimbursement to States when FEMA is administering the program under subsection 408(e) of the Act, no such reimbursement is authorized. Therefore, we are now only offering three options to the State for the implementation of the "Other Needs" assistance program—a program administered exclusively by FEMA, one administered by the State with substantial FEMA assistance, and one administered by the State with minimal FEMA participation.

Whichever option a State chooses in the context of the "Other Needs" assistance, FEMA will always provide 75 percent of the grant funds, and the State is obliged to provide the balance of the "Other Needs" assistance. Although FEMA initially expressed a desire for all States to choose by May 1, 2002, a particular option for the method of administering "Other Needs" assistance during the balance of this calendar year, we recognize that an early decision on this important issue is not feasible for most States, so we decided not to require such a decision immediately. However, after the interim final rule is published we expect that States will become familiar with the new IHP and will as a result become more comfortable making such choices reasonably promptly.

One of the consistent themes in the State comments we received relates to the potential for appeals of IHP decisions and the possibility that States may want to play a role as advocate for disaster victims. A number of the States expressed an inclination for FEMA to administer IHP, but also expressed a desire to be able to play an advocacy role for disaster victims. A number of States also were concerned with the provision of the proposed rule which indicates that FEMA can take up to 90 days to respond to appeals from applicants for IHP assistance. See 44 CFR 206.115(f) of the proposed rule. We retained the 90 day appeal provision in the interim final rule at 44 CFR 206.115(f) because under section 423(b) of the Stafford Act any appeal decision must be rendered within 90 days. However, the overwhelming majority of appeals in the context of the previous temporary housing and Individual and Family Grant programs are routinely answered in less than 30 days, so we anticipate that FEMA will not normally need 90 days to respond to appeals under IHP. FEMA will work with States to ensure that they will be able to provide advisory and advocacy

assistance to IHP applicants whose applications for assistance under IHP are pending.

State Administrative Plan and Other IHP Documentation

As we described in the proposed rule and the Supplementary Information discussion relating to that document, we initially intended to ask each State to sign an annual Memorandum of Understanding (MOU) with FEMA in which each State would identify in advance of the occurrence of disasters the extent to which the State would participate in the administration of the Other Needs Assistance portion of IHP during that year. One State expressed a concern that FEMA's proposal to require States to execute MOUs, in addition to our plan to develop State Management Plans (in lieu of the previous Individual and Family Grant State Administrative Plans) and an MOU Support Guide, constituted excessive IHP documentation. The commenter suggested that this type of IHP documentation be limited as much as possible so as not to overburden the system. On the other hand, several States expressed a concern that FEMA has not provided adequate documentation to clearly describe the process by which IHP will be administered.

FEMA and all of the States that commented on the proposed rule realize that FEMA needs to develop documentation that is adequate to clarify the rules for the administration of IHP and to ensure consistency and fairness in its implementation throughout the United States. We also recognize that it would be counterproductive for FEMA to require the use of excessive documentation in our development of the program's basic ground rules. Therefore, we decided to consolidate the MOU as a "pre-planning portion" into the State Administrative Plan for Other Needs Assistance. We believe that a single consolidated document as outlined in 206.120(b) will balance the need for clarity and conciseness when either the State or FEMA administers Other Needs Assistance.

State Administration of Disaster Housing Operations

We also pointed out in the proposed rule that States would be given the option of participating in the management of "direct" temporary housing assistance (*i.e.*, the provision of mobile homes and travel trailers) under section 408 of the Stafford Act. *See* 42 U.S.C. 5174(c)(1)(B). Several entities questioned whether FEMA is authorized

to permit States to participate in the administration of the provision of housing assistance. Because there is no explicit authority for States to participate in the administration of housing activities under subsection 408(c) of the Stafford Act (as there is under subsection 408(f) of the Act with respect to the provision of "Other Needs" assistance), we have concluded that Congress did not intend to authorize State participation in disaster housing activities under subsection 408(c) of the Act. Therefore, we have decided not to retain the option of allowing States to participate in the administration of "direct" temporary housing assistance. Accordingly, the interim final IHP rule will not contain language permitting the State to administer "direct" temporary housing activities. However, this decision will not impact the general statutory mandate that States provide group sites, complete with utilities, in the course of the provision of "direct housing" assistance.

Period of IHP Assistance

As we pointed out when we published the proposed IHP rule, subsection 408(a)(3) of the previous version of section 408 of the Stafford Act stated "Federal financial and operational assistance under this section shall continue for no longer than 18 months." * * * Section 411 of the Stafford Act does not contain any specific time limitation relating to the Individual and Family Grant Program. On the other hand, under the amended version of section 408, 42 U.S.C. 5174(c)(1)(B)(ii), the only type of temporary housing assistance that is time limited (to 18 months) is "direct" temporary housing assistance (*e.g.*, mobile homes and travel trailers). When we published the proposed rule we indicated that we were inclined to establish a standard period of 18 months for IHP assistance to be available. *See* 206.110(e) of the proposed rule. However, we also solicited comments on this aspect of IHP.

We received a wide variety of comments on this issue. A number of States believed that there should be a standard period of IHP assistance up to 18 months. One State suggested that there should be a standard period of IHP assistance, but it should extend to 24 months. Another State believed there should not be a standard period of IHP assistance, but that instead FEMA should continue to provide such assistance until the maximum amount of assistance (*i.e.*, the statutory cap of \$25,000) was reached. Some comments also expressed the belief that "Other

Needs" assistance, which is intended only to address immediate necessary expenses and serious needs, need not remain available for as long as 18 months.

Although we have decided to retain a regulatory deadline beyond which IHP assistance will normally not be available (*See* 206.110(e) of the interim final rule), the interim final rule also gives FEMA's Associate Director for Response and Recovery the discretionary authority to extend this period under extraordinary circumstances if an extension would be in the public interest. Although we have opted to establish an 18 month period for the provision of IHP assistance, we note that the statutory cap for such assistance has already been set at \$25,000, and in most cases that cap would be exceeded within 18 months—indeed, in many urban areas where FEMA might provide rental assistance while a disaster victim's home is being repaired, the \$25,000 cap could be reached well before 18 months have passed. With respect to the concern about the implicit limitation of "Other Needs" assistance to address only immediate and short-term needs, we believe that it is not likely that we will continue to receive "Other Needs" applications for extended periods, so it is not necessary to establish a shorter regulatory limit on the period during which such assistance may be available.

\$5,000 Cap on Housing Repair Assistance

When we published the proposed rule on this new provision of the Stafford Act, we explained that subsection 408(c)(2), 42 U.S.C. 5174(c)(2), contains a \$5,000 cap on the amount of assistance that FEMA is authorized to provide for the repair of owner-occupied private residences which have been damaged by disasters. Under the previous provision of section 408 of the Stafford Act, there was no cap relating to this type of assistance. We received a number of comments on this new provision of the Stafford Act, and all of them expressed the belief that this cap would imprudently limit FEMA's ability to provide meaningful housing repair assistance to many disaster victims. We agree with this concern, and as a result are seeking a modification to this provision. However, until such a change is made, FEMA does not have the discretion to exceed this \$5,000 cap for housing repairs to homeowners.

Permanent Housing Authority

In the proposed rule, which we published on January 23, 2002, we described the new provision of the Stafford Act that authorizes FEMA to

provide assistance for the construction of housing in insular areas and other remote locations to replace primary residences that are destroyed during disasters. That provision, which appears at subsection 408(c)(4) of the Stafford Act, 42 U.S.C. 5174(c)(4), authorizes FEMA to “provide financial assistance or direct assistance to individuals or households to construct permanent housing in insular areas outside the continental United States and in other remote locations * * *” when no alternative housing resources are available and when other types of housing assistance are not feasible or cost effective.

Virtually all of the comments we received on this provision of the rule were supportive of the new authority. However, one commenter suggested that FEMA interpret this new authority more expansively when affordable housing shortages exist in many States, particularly where new types of permanent housing are available at very reasonable rates. The commenter suggested that FEMA should consider the provision of permanent housing construction whenever it might be cost-effective, regardless of the remoteness of the area where the disaster occurred. We do not believe this proposal is consistent with the new statutory authority, so we declined to revise this provision of the rule. *See* 44 CFR 206.117(b)(4) of the interim final rule.

\$10,000 Housing Replacement Authority

We noted when we published the proposed rule in January of 2002 that the revised version of section 408 of the Stafford Act contains a new authority to provide replacement housing assistance, but that authority is capped at \$10,000. *See* subsection 408(c)(3) of the Act, 42 U.S.C. 5174(c)(3), which authorizes “financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.” Our proposed rule to implement this new provision indicated that the authority would only be used where an owner-occupied residence could be replaced “in its entirety” for \$10,000 or less, and we speculated that this authority would not be used often because it would usually not be feasible to replace the housing of disaster victims for this limited amount. *See* section 206.117(b)(3) of the proposed rule.

In response we received a comment that suggested we may have interpreted 42 U.S.C. 5174(c)(3) too narrowly and that in fact the new authority is not necessarily limited to situations where housing can be replaced entirely for

\$10,000 or less. Therefore, we have revised the interim final rule to reflect the fact that the authority can be used in FEMA’s discretion when disaster victims who qualify for such assistance have received at least \$10,000 of damage to their homes and can apply such funds toward the cost of acquiring a new permanent residence. *See* section 206.117(b)(3) of the interim final rule.

Transient Accommodations

The FEMA regulation that has been used to implement the earlier version of the Stafford Act’s temporary housing authority contains a reference to FEMA’s provision of “transient accommodations.” *See* 44 CFR 206.110(g)(i)(ii). Transient accommodation assistance has historically been provided by FEMA for short periods to reimburse disaster victims whose homes have been made uninhabitable by disasters for short term lodging accommodations (such as hotel rooms) before they are provided rental assistance. We described in the proposed rule our intention to eliminate from the final rule the explicit reference to “transient accommodations” because we intend to continue providing such short-term assistance in the form of lodging expense reimbursement under subsection 408(c)(1)(A) of the Stafford Act, 42 U.S.C. 5174(c)(1)(A), which authorizes FEMA to provide “financial assistance to individuals or households to rent alternative housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings.”

We received only one comment expressing a concern about our proposal to delete the explicit reference to transient accommodations in the regulation. That commenter felt that by deleting the reference to the term, we enable FEMA to subsequently establish a policy of eliminating such assistance—without having to amend our regulations. We are certain that we will continue to provide short-term lodging reimbursement to disaster victims while they are addressing their long-term housing needs separately. It is also clear under the new version of section 408 of the Stafford Act that we have the authority to provide such multiple forms of housing assistance. *See* subsection 408(b)(2)(B) of the Stafford Act, 42 U.S.C. 5174(b)(2)(B). Therefore, we have decided not to include an explicit reference to “transient accommodations” in the interim final rule which we are publishing today, even though there is such a reference in the previous

temporary housing rule, which appears at 44 CFR 206.110(g)(1)(ii).

Flood Insurance Purchase Requirements

We discussed in the proposed IHP rule that paragraphs (A)(iv) and (B)(ii)(II) of the new version of subsection 408(d)(2) of the Stafford Act, 42 U.S.C. 5174(d)(2)(A)(iv) and (B)(ii)(II), relate to the obligation to purchase insurance on disaster housing units that are provided under the authority of IHP. The insurance purchase mandates relate to “hazard insurance” and “flood insurance” (flood insurance is not typically provided in standard homeowner’s insurance policies). We received no comments relating to our interpretation that the requirement to purchase “hazard insurance” equates to a mandate to obtain standard homeowner’s insurance, rather than requiring the purchase of insurance to address every conceivable hazard that might exist in a given location. Therefore, we intend to implement this aspect of IHP consistent with this thinking.

We also pointed out in the proposed rule that there was an inconsistency between the flood insurance purchase mandate relating to the purchase of housing units that FEMA sells under subsection 408(d)(2) of the Stafford Act, 42 U.S.C. 5174(d)(2), 42 U.S.C. 5174(d)(2)(A)(iv) and (d)(2)(B)(ii)(II) mandate that when FEMA sells housing units to disaster victims, States, local governments, and voluntary organizations, these entities must agree to purchase and maintain flood insurance on the housing units. That flood insurance purchase mandate is not explicitly imposed in the context of sales of housing units to “other persons” under 42 U.S.C. 5174(d)(2)(B). In addition, the IHP provision relating to replacement housing grants, as opposed to FEMA’s sale of housing units, only requires the purchase of flood insurance when such housing is located within mapped flood prone areas. We proposed to interpret these flood insurance purchase mandates consistent with one another—*i.e.*, to require the purchase of flood insurance on all three of these types of housing, but only when the housing is to be located in designated special flood hazard areas. The comments we received on this issue were all consistent with our proposal, so we drafted the interim final rule to ensure evenhanded application of the flood insurance purchase mandate. *See* 44 CFR 206.110(k)(1).

Group Flood Insurance Policy

When we published the IHP rule in January we described our proposal to eliminate the Group Flood Insurance Policy (GFIP). FEMA established the GFIP in the mid-1990s to address the need for recipients of Individual and Family Grant (IFG) assistance under section 411 of the Stafford Act to purchase flood insurance as a condition of their receipt of IFG assistance. The regulation concerning the GFIP appears at 44 CFR 206.131(d)(2), which, in turn, relates to a regulation that was published by FEMA's Federal Insurance Administration (which is now a part of FEMA's Federal Insurance and Mitigation Administration, or FIMA) and which appears at 44 CFR 61.17. Under the IFG program, disaster victims who were eligible for IFG assistance received GFIP coverage that was paid for out of their IFG benefits.

Most of the States which commented on our proposal to eliminate the GFIP expressed support for continuation of that program. The basis for the support of the program relates to the fact that disaster victims who qualified for IFG assistance generally had low incomes and were not as able to afford to pay flood insurance premiums as could other disaster victims. Because the penalty for failing to purchase and maintain flood insurance as a condition of receiving disaster assistance under the old IFG program and under the new IHP is a denial of future disaster assistance, most of the States that commented on our proposal believed that it would be imprudent not to continue providing GFIP coverage for low income disaster victims.

We have decided to retain the GFIP under the interim final rule which we are publishing today. GFIP coverage will be provided to recipients of "Other Needs" assistance pursuant to subsections 408(e) and (f) of the Stafford Act, 42 U.S.C. 5174(e) and (f). As indicated in the interim final rule (*See* 44 CFR 206.119(d) of the rule), GFIP premiums are considered to be a necessary expense for the purposes of "Other Needs" Assistance. The amount of coverage under the GFIP policies which are issued will be equivalent to the maximum grant amount established under section 408 of the Stafford Act. We will coordinate with FEMA's Federal Insurance and Mitigation Administration in our efforts to implement the GFIP under the "Other Needs" Assistance authority.

Privacy Act Issues

When we published the IHP proposed rule we discussed that paragraph (2) of

subsection 408(f) of the Act, 42 U.S.C. 5174(f)(2), contains an explicit authorization to provide to 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 to the individuals and households." We received a number of comments relating to this new statutory provision and the proposed rule, and all of these comments were supportive of the new and clarified authorization to share such information. Therefore, we have retained this provision in the interim final rule. *See* 206.110(j).

Financial Management Guidance

We have added to the proposed rule a new section relating to financial management issues and the administration of "Other Needs" Assistance. This new section appears at section 206.120 of the interim final rule. Previously we had intended to address the financial management aspects of the new program in the Memorandum of Understanding that was to be used in the course of our coordination with the States on IHP activities. However, based upon comments we received on the proposed rule, we decided that it would be appropriate to include in the rule a brief discussion of the financial management principles that we will be using to implement IHP. These issues are especially important in the context of decision-making by the States concerning the role they will play in the administration of IHP (Other Needs Assistance) activities. Because this provision of the interim final rule is new, we are taking this opportunity to draw attention to it and to solicit comment on section 206.120.

Perhaps the most fundamental issue that we would like to point out relates to the distinction in State Administrative Plans (SAP) between an administrative option and an administrative plan. *See* 206.120(b). The administrative options describe the degree of State and/or FEMA involvement in administering Other Needs Assistance. Due to the systematic constraints to support each of these administrative options, the ability of a State to amend its chosen administrative option *after a declaration of a disaster* is severely limited. The systematic limitations, however, are less significant when considering amendments to the administrative plan. *See* 206.120(c)(3)(ii). The administrative plan is only required when a State chooses to administer Other Needs Assistance. The ability of a State to amend and alter the State administrative plan may, in

general, be done without altering the administrative option. This is primarily because changes to a State's administrative plan (completed and provided to FEMA when the State chooses to administer Other Needs Assistance) will not significantly impact the administrative option selected by the State to process a disaster as long as the State continues to administer Other Needs Assistance.

Conforming Changes to 44 CFR Part 206

We are also making several changes to the other Stafford Act regulations which appear at 44 CFR Part 206 to ensure consistency between those regulations and the interim final rule that we are publishing today. The first change appears at 44 CFR 206.44(a), and it reflects the fact that on limited occasions FEMA may begin providing housing assistance under the Individuals and Households Program before a FEMA-State Agreement has been executed. The second change appears at 44 CFR 206.62(f), and it reflects that the full range of IHP assistance may be provided in both Presidentially-declared emergencies and major disasters. The third change relates to 44 CFR 206.101, and that change indicates that the Temporary Housing Assistance authority remains in place for emergencies and major disasters that were declared on or before October 14, 2002. The fourth change relates to 44 CFR 206.131, and that change indicates that the Individual and Family Grant Program authority remains in place for major disasters that were declared on or before October 14, 2002. The final conforming change appears at 44 CFR 206.191(d)(2), and that change updates the Stafford Act's individual assistance duplication of benefits regulation to reflect the new IHP authority.

Administrative Procedure Act Determination

We are publishing this interim final rule even though we had published a notice of proposed rule making. In accordance with 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect upon publication in the **Federal Register** in order to comply with Public Law 106-390, which establishes a deadline for implementation of the Individuals and Households Program. We invite comments from the public on this interim final rule. In particular we invite comments from states, communities or members of the public who have been impacted by major disasters and who have received assistance under this new program. Please send comments to FEMA in

writing on or before April 15, 2003. After we have reviewed and evaluated the comments we will publish a final rule.

National Environmental Policy Act (NEPA)

We explained when we published the proposed rule that FEMA's rules implementing NEPA exempt this rule from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). See 44 CFR 10.8(d)(2)(xix)(D) and (F). The development of our IHP regulations is exempt from NEPA because they reflect administrative changes to the program that would have no effect on the environment.

Although no one disagreed with our determination that this rule is exempt from the preparation of an EA or an EIS, one commenter suggested that a statement under the NEPA discussion in the proposed rule was misleading. We stated that "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." The commenter pointed out that this statement could be read more broadly than we intended and could be interpreted to suggest that FEMA would routinely perform an EA or EIS in the context of providing IHP assistance. This is not our intention, and we hope to soon revise our list of categorical exclusions at 44 CFR 10.8(d)(2) to reflect the enactment and implementation of the new IHP program.

Paperwork Reduction Act of 1995

This interim final rule contains a collection of information that is subject to the Paperwork Reduction Act of 1995 (4 U.S.C. Chapter 35) and has been approved by the Office of Management and Budget (OMB) under OMB control number 3067-0296. OMB approval expires March 31, 2005. In the proposed rule published in the **Federal Register** on January 23, 2002, we asked for comments on the proposed collection of information but did not receive any. Under the Paperwork Reduction Act, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number.

In addition to the collection of information approved under OMB control number 3067-0296, FEMA had already obtained approval for the information collection "Disaster Assistance Registration/Application for Disaster Assistance," under OMB control number 3067-0009. It expires July 28, 2003. The information from the

application form is used to implement the current versions of sections 408 and 411 of the Stafford Act. FEMA is taking steps to reduce the information collection burden 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 interim final rule.

The following collection of information requirements are approved under OMB control number 3067-0296:

Applicants

Title: Request for Approval of Late Application, 8,000 respondents at 45 minutes per response equals 6,000 annual burden hours. FEMA will accept late registrations for an additional 60 days after the registration period ends and will process late registrations for those applicants who provide written justification for the delay in their registration.

Title: Request for Continued Assistance (Housing and Medical), 2,000 respondents at 30 minutes per response equals 1,000 annual burden hours. After the initial assistance, FEMA may provide continued Housing and Medical reimbursement based on need. Applicants must submit a written request and information about their permanent housing plans or receipts (bills) for medical expenses.

Title: Appeal of Program Decision (to include review and use of supplemental guidance), 30,000 responses at 45 minutes per response equals 22,500 annual burden hours. Under the provisions of section 423 of the Stafford Act, applicants for assistance from FEMA may appeal any eligibility determination by submitting a written request and explanation for the appeal.

States

Title: Review Memorandum of Understanding (MOU) and Guidance Supplemental, 56 responses at 3 hours per response equals 168 annual burden hours. The Governor may request the authority to participate in the administration or management of the Individuals and Households Program (IHP). A State must sign an agreement, which establishes a partnership with FEMA for the delivery of the assistance. The agreement identifies the State's proposed level of support and participation during disaster recovery.

Title: Development of State Administrative Plans for Financial Assistance to Address Other Needs (to include Financial Agreement), 56 responses at 3 hours per response equals 168 annual burden hours. The Governor may request a grant from FEMA to

provide financial assistance to individuals and households in the State under the IHP. So that FEMA may effectively account for the program costs, the State must provide an administrative plan that addresses the financial and grants management mandates that all applicable Federal laws, regulations and circulars impose, including 44 CFR parts 11 and 13.

Addresses: We ask that you submit any written comments on this collection of information to the Desk Officer for the Federal Emergency Management Agency, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503 on or before October 30, 2002.

For Further Information Contact: Requests for additional information or copies of the collection of information should be made to Muriel B. Anderson, Chief, Records Management Section, Program Services and Systems Branch, Facilities Management and Services Division, Administration and Resource Planning Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472, telephone number (202) 646-2625, FAX number (202) 646-3347, or e-mail address: *muriel.anderson@fema.gov*.

Regulatory Planning and Review

Regulatory Flexibility Act

When we published the proposed rule we expressed our determination that there is no need for FEMA to prepare an initial regulatory impact analysis under the Regulatory Flexibility Act. Section 3 of that 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", which the Act defines as "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. All of the comments we received on this aspect of the IHP rule were in accord with our determination, so we remain of the opinion that there is no need for FEMA to prepare a

regulatory impact analysis relating to this interim final rule.

Executive Order 12866—Regulatory Planning and Review

In addition, pursuant to Executive Order 12866 we examined whether this 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).

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 impacts of entitlements, grants, user fees, or loan programs* * *; or (4) Raise novel legal or policy issues* * *.” We noted in January that this rule does not meet the criteria under paragraphs 2, 3, or 4 of this provision of the Executive Order. In addition, we noted our determination that this rule is not likely to adversely affect the economy (under paragraph 1 of this provision of the Executive Order). Finally, we also noted that because it is likely that FEMA will pay out in excess of \$100,000,000 in most fiscal years under IHP, the rule is “significant” pursuant to the definition at section 3(f)(1) of the Executive Order.

Therefore we prepared an economic impact analysis relating to the rule when it was published in January. We noted in our analysis that pursuant to the implementation of IHP there will be a positive impact on disaster victims, the economies of local and tribal governments, the economies of States in which disasters occur, and generally on the health and safety of communities that are struck by disasters. We did not receive any comments on the economic impact analysis, which we published along with the proposed IHP rule, so we remain of the opinion that our analysis remains accurate. The Office of Management and Budget has reviewed this interim final rule under Executive Order 12866.

Assessment of Regulation on Families

We noted when we published the proposed IHP rule that the provision of assistance under IHP would have a positive impact on families under section 654 of the Treasury and General Government Appropriations Act of 1999, which 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. No commenter disagreed with our determinations that implementation of IHP would have a positive impact on families. One commenter did point out that our proposal to repeal the Group Flood Insurance Program might create a fiscal burden on IHP recipients who would be required to purchase flood insurance using their own funds in the event that they received IHP assistance for insurable real and personal property which is located in designated special flood hazard areas (*i.e.*, mapped flood prone areas). Our discussion to retain the Group Flood Insurance Program addresses this comment. Therefore, we have not revised our earlier determination that the IHP rule is consistent with section 654 of the Treasury and General Government Appropriations Act of 1999 and that FEMA’s implementation of IHP would help to stabilize family circumstances in the aftermath of major disasters.

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

We pointed out when we published the proposed IHP rule that most forms of financial assistance that will be provided pursuant to IHP will not involve providing either Federal financial assistance relating to construction and property improvements or conducting Federal programs that will affect land use. However, we also noted that there are some activities authorized by the IHP authority that may trigger the requirements of Executive Orders 11988 and 11990. For example, the use of Federal funds to construct housing pursuant to subsections 408(c)(3) and (4) of the Stafford Act, 42 U.S.C. 5174(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(c)(1) of the Act, 42 U.S.C. 5174(c)(1), to construct group sites for the placement of mobile homes or readily fabricated dwellings for the use of disaster victims, then FEMA would follow the process

described in the Executive Order and our implementing regulation. We received no comments on this aspect of the IHP rule, so we are finalizing this rule in accordance with our earlier explanation of the relationship between the rule and the Executive Orders.

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 and in the development of 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.” The Executive Order requires Federal agencies to 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. As we indicated when we published the proposed rule relating to this new disaster assistance program, we met with a number of State representatives as we were developing the proposed rule, and we have continued to consult with those representatives in the course of our development of this interim final rule.

We noted when we published the proposed IHP rule that it does not have “substantial direct effects on the States”, and no commenter disagreed with that determination. Indeed, most of the commenters expressed support for FEMA’s decision to give States the discretion to participate in the administration of IHP. Therefore, we remain of the opinion that our issuance of this interim final rule is not in conflict with Executive Order 13132.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”, 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 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.

We stated when we published the proposed IHP rule that we did not anticipate that actions under the rule would have a disproportionately high and adverse human health effect on any segment of the population. No commenter disagreed with this determination, so at this time we reiterate our earlier determination that the requirements of this Executive Order do not apply to this 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. FEMA is required by statute to issue this rule, and, as we stated when we published the proposed rule, we do not believe that the rule will significantly and uniquely affect the communities of Indian tribal governments. Nor do we believe that the rule will impose substantial direct compliance costs on those communities. Therefore, we do not believe that the requirements of this Executive Order apply in the context of our publication of this 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:

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

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

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

2. Revise Subpart D as follows.

Subpart D—Federal Assistance to Individuals and Households

Sec.

- 206.110 Federal assistance to individuals and households.
- 206.111 Definitions.
- 206.112 Registration period.
- 206.113 Eligibility factors.
- 206.114 Criteria for continued assistance.
- 206.115 Appeals.
- 206.116 Recovery of funds.
- 206.117 Housing assistance.
- 206.118 Disposal of housing units.
- 206.119 Financial assistance to address other needs.
- 206.120 State administration of other needs assistance.

Subpart D—Federal Assistance to Individuals and Households

§ 206.110 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, as amended by the Disaster Mitigation Act of 2000. This program provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of a major disaster or emergency, have uninsured or under-insured, 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 or emergency. 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 or emergency exists, except that reasonable lodging

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. These exemptions do not apply to FEMA recovering assistance fraudulently obtained or misapplied.

(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 or other needs; or
- (4) Housing is not available on the private market.

(i) *Cost sharing.*

(1) Except as provided in paragraph (i)(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 “Other Needs” assistance under subsections 408 (e) and (f) of the Stafford Act will be as follows;

(i) The Federal share shall be 75 percent; and

(ii) The non-federal share shall be paid from funds made available by the State. If the State does not provide the non-Federal share to FEMA before FEMA begins to provide assistance to individuals and households under subsection 408(e) of the Stafford Act, FEMA will still process applications. The State will then be obliged to reimburse FEMA for the non-Federal

cost share of such assistance on a monthly basis. If the State does not provide such reimbursement on a monthly basis, then FEMA will issue a Bill for Collection to the State on a monthly basis for the duration of the program. FEMA will charge interest, penalties, and administrative fees on delinquent Bills for Collection in accordance with the Debt Collection Improvement Act. Cost shared funds, interest, penalties and fees owed to FEMA through delinquent Bills for Collections may be offset from other FEMA disaster assistance programs (*i.e.* Public Assistance) from which the State is receiving, or future grant awards from FEMA or other Federal Agencies. Debt Collection procedures will be followed as outlined in 44 CFR part 11.

(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:

(i) In response to a release signed by the applicant that specifies the purpose for the release, to whom the release is to be made, and that the applicant authorizes the release;

(ii) In accordance with one of the published routine uses in our system of records; or

(iii) As provided in paragraph (j)(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 shall not further disclose the information to other entities, and shall not 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, Public Law 93-234, as amended (42 U.S.C. 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 assistance 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 that are located in a special flood hazard area may not receive Federal Assistance for National Flood Insurance Program (NFIP)—insurable real and/or personal property, damaged by a flood, unless the community in which the property is located is participating in the NFIP (*See* 44 CFR part 59.1), or the exception in 42 U.S.C. 4105(d) applies. However, if the community in which the damaged property is located qualifies for and enters the NFIP during the six-month period following the declaration, the Governor's Authorized Representative may request a time extension for FEMA (*See* § 206.112) to accept registrations and to process assistance applications in that community.

(3) Flood insurance purchase requirement:

(i) As a condition of the assistance and in order to receive any Federal assistance for future flood damage to any insurable property, individuals and households named by FEMA as eligible recipients under section 408 of the Stafford Act who receive assistance, 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 assistance amount. 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 applicant is a homeowner, flood insurance coverage must be maintained at the address of the flood-damaged property for as long as the address exists. The flood insurance requirement is reassigned to any subsequent owner of the flood-damaged address.

(B) If the applicant 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.

(C) When financial assistance is used to purchase a dwelling, flood insurance coverage must be maintained on the dwelling for as long as the dwelling exists and is located in a designated Special Flood Hazard Area. The flood insurance requirement is reassigned to any subsequent owner of the dwelling.

(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

or required by the Small Business Administration.

(l) *Environmental requirements.*

Assistance provided under this subpart must comply with the National Environmental Policy Act (NEPA) and other environmental laws and Executive Orders, consistent with 44 CFR part 10.

(m) *Historic preservation.* Assistance provided under this subpart generally does not have the potential to affect historic properties and thus is exempted from review in accordance with section 106 of the National Historic Preservation Act, with the exception of ground disturbing activities and construction related to §§ 206.117(b)(1)(ii) (Temporary housing), 206.117(b)(3) (Replacement housing), and 206.117(b)(4) (Permanent housing construction).

§ 206.111 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.

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, made unavailable by the landlord (to meet their disaster housing need) 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 applicant's capability to pay housing costs. If the household income has not changed subsequent to or as a result of the disaster then the determination is based upon the amount paid for housing before the disaster. If the household income is reduced as a result of the disaster then the applicant will be deemed capable of paying 30 percent of gross post disaster income for housing. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Director.

Financial assistance means cash 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, as well as any persons, 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, safety or security problems.

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

Lodging expenses means expenses for reasonable short-term accommodations that individuals or households incur in the immediate aftermath of a disaster. Lodging expenses may include but are

not limited to the cost of brief hotel stays.

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 or local government 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.

Significantly delayed means the process has taken more than 30 days.

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

We, our, and us mean FEMA.

§ 206.112 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.

§ 206.113 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 has incurred a disaster-related necessary expense or serious need in the state in which the disaster has been declared, without regard to their residency in that state;

(2) 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 the claim is denied;

(3) 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;

(4) In a situation where the applicant has insurance, when the insured individual or household's 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;

(5) In a situation where the applicant has insurance, when housing is not available on the private market;

(6) In a situation where the applicant has insurance, when the insured individual or household has accepted all assistance from other sources for which he, she, or they are eligible, including insurance, when the insured individual or household's insurance proceeds and all other assistance are less than the maximum amount of assistance FEMA can authorize and the proceeds are insufficient to cover the necessary expense or serious needs;

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

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

(9) With respect to housing assistance, if a renter's primary residence is no longer available as a result of the disaster.

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

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

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

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

(4) For housing assistance, 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 assistance, 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 significantly 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, funeral expenses and uninsurable items to such individuals or households. However, if the community in which the damaged property is located qualifies for and enters the NFIP during the six-month period following the declaration then the individual or household may be eligible;

(8) To individuals or households who did not fulfill the condition to purchase and maintain flood insurance as a requirement of receiving previous Federal disaster assistance;

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

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

§ 206.114 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 during the period of assistance, but not to exceed the maximum amount of assistance for the program, 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 provided 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, and provide documentation identifying the continuing need.

(3) FEMA generally expects that pre-disaster renters will use their initial rental assistance to obtain permanent housing. However, we may certify them, during the period of assistance, 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, during the period of 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 repair assistance will be required to submit information and/or documentation identifying the continuing need.

(6) 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.

§ 206.115 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 § 206.114, Criteria for continued assistance;

(6) FEMA's intent to collect rent from 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 decisions made under this subpart, unless FEMA has made a grant to the State to provide assistance to individuals and households under § 206.111(a), State administration of other needs assistance; then the applicant must appeal to the State.

(d) An applicant may ask for a copy of information in his or her file by writing to FEMA or the State as

appropriate. 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 or her.

(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, as appropriate, 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.

§ 206.116 Recovery of funds.

(a) The applicant must agree to repay to FEMA (when funds are provided by FEMA) and/or the State (when funds are provided by 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 and/or the State exceed the amount that the applicant recovers from insurance or any other source.

(b) An applicant must return funds to FEMA and/or the State (when funds are provided by the State) when FEMA and/or the State determines that the assistance was provided erroneously, that the applicant spent the funds inappropriately, or that the applicant obtained the assistance through fraudulent means.

§ 206.117 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. FEMA may also 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. This includes reimbursement for reasonable short-term lodging expenses that individuals or households incur in the immediate aftermath of a disaster.

(A) FEMA 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) All utility costs and utility 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.

(D) The occupant is responsible for all housing security deposits. In extraordinary circumstances, 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.

(i) *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 pre-disaster 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 44 CFR part 10, Environmental Considerations, and all other applicable environmental laws and Executive Orders.

(D) All utility costs and utility 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 or funded 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 that 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) After the end of the 18-month period of assistance, FEMA may begin to 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 § 206.119(e) and has not been extended;

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

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

(4) The occupant(s) 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(s) does not provide evidence documenting that they are working towards a permanent housing plan.

(H) FEMA will provide a 15 day written notice when initiating the termination of direct 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, privately owned bridge, 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 damaged 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 all 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 the primary residence of an owner-occupied dwelling if the dwelling was damaged by the disaster and there was at least \$10,000 of damage (as adjusted annually to reflect changes in the CPI). The

applicant may either replace the dwelling in its entirety for \$10,000 (as adjusted annually to reflect changes in the CPI) or less, or may use the assistance toward the cost of acquiring a new permanent residence that is greater in cost than \$10,000 (as adjusted annually to reflect changes in the CPI). All replacement assistance awards must be individually approved by the Associate Director. The Associate Director may approve replacement assistance for applicants whose damages are less than \$10,000 in extraordinary circumstances where replacement assistance is more appropriate than other forms of housing assistance.

(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 at 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 and privately owned bridge;

(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) Replacement assistance, will be based on the verified disaster-related level of damage to the dwelling, or the statutory maximum, whichever is less.

(3) 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, including reasonable hazard mitigation measures, and federal environmental laws and regulations. Dwellings will be of average quality, size and capacity, taking into consideration the needs of the occupant.

§ 206.118 Disposal of housing units.

(a) FEMA may sell housing units purchased under § 206.117(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. FEMA may approve adjustments to the sales price when selling a housing unit to the occupant of a unit if the purchaser is unable to pay the fair market value of the home or unit and when doing so is in the best interest of the applicant and FEMA.

(iii) FEMA may sell a housing unit to the occupant 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.

§ 206.119 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 assistance 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 that 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 disaster-related 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 to avoid additional disaster damage generally include storage of personal property while disaster-related repairs are being made to the primary residence, and return of the personal property to the individual or household's primary residence.

(6) *Other.* Other disaster-related expenses not addressed in this section may include:

(i) The purchase of a Group Flood Insurance Policy as described in paragraph (d) of this section.

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

(d) *Group Flood Insurance purchase.* Individuals identified by FEMA as eligible for "Other Needs" assistance under section 408 of the Stafford Act as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area (SFHA) may be included in a Group Flood Insurance Policy (GFIP) established under the National Flood Insurance Program (NFIP) regulations at 44 CFR 61.17.

(1) The premium for the GFIP is a necessary expense within the meaning of this section. FEMA or the State shall withhold this portion of the Other Needs award and provide it to the NFIP on behalf of individuals and households who are eligible for coverage. The coverage shall be equivalent to the maximum assistance amount established under section 408 of the Stafford Act.

(2) FEMA or the State IHP staff shall provide the NFIP with records of individuals who received an "Other Needs" award and are to be insured through the GFIP. Records of "Other Needs" applicants to be insured shall be accompanied by payments to cover the premium amounts for each applicant for the 3-year policy term. The NFIP will then issue a Certificate of Flood

Insurance to each applicant. Flood insurance coverage becomes effective on the 30th day following the receipt of records of GFIP insureds and their premium payments from the State or FEMA, and such coverage terminates 36 months from the inception date of the GFIP, which is 60 days from the date of the disaster declaration.

(3) Insured applicants would not be covered if they are determined to be ineligible for coverage based on a number of exclusions established by the NFIP. Therefore, once applicants/policyholders receive the Certificate of Flood Insurance that contains a list of the policy exclusions, they should review that list to see if they are ineligible for coverage. Those applicants who fail to do this may find that their property is, in fact, not covered by the insurance policy when the next flooding incident occurs and they file for losses. Once the applicants find that their damaged buildings, contents, or both, are ineligible for coverage, they should notify the NFIP in writing in order to have their names removed from the GFIP, and to have the flood insurance maintenance requirement expunged from the data-tracking system.

§ 206.120 State administration of other needs assistance.

(a) *State administration of other needs assistance.* A State may request a grant from FEMA to provide financial assistance to individuals and households in the State under § 206.119. The State may also expend administrative costs not to exceed 5 percent of the amount of the grant in accordance with section 408(f)(1)(b) of the Stafford Act. Any State that administers the program to provide financial assistance to individuals and households must administer the program consistent with § 206.119 and the State Administrative Option and the State Administrative Plan that we describe at paragraph (b) and (c) of this section.

(b) *State administrative options.* The delivery of assistance under § 206.119 is contingent upon the State choosing an administrator for the assistance. The State may either request that FEMA administer the assistance or the State may request a grant from FEMA for State administration. The Governor or designee will execute the State Administrative Option annually. During non-disaster periods the State may submit any proposed amendments to the administrative option in writing to the FEMA Regional Director. FEMA shall review the request and respond to the Governor or his/her designee within

45 days of receipt of the proposed amendment;

(c) *State Administrative Plan (SAP)*. The delivery of assistance by a State under this section is contingent upon approval of a SAP, which describes the procedures the State will use to deliver assistance under section 408 of the Stafford Act, 42 U.S.C. 5174, when a State requests a grant to administer Other Needs assistance. All implementation procedures must be in compliance with Federal laws and requirements, State laws and procedures, and paragraphs (c) and (d) of this section.

(1) *Timeframe for submission of SAP*. A signed SAP, or renewal, must be provided to the FEMA Regional Director prior to November 30 of each year. A SAP shall be effective for at least one year, and must be resubmitted in full every three years.

(2) *Renewals*. Annual updates/revisions to the SAP must be submitted by November 30 of each year for FEMA's review and approval by December 31. If the SAP does not need to be updated/revised, a letter from the State stating the SAP is still current must be submitted by November 30 to document the SAP submission requirement.

(3) *Amendments*. The State may request amendments to the SAP at any time. An amendment is effective upon signature by the FEMA Regional Director and the Governor or his/her designee. The State may request an amendment to the administrative plan as follows:

(i) *During non-disaster periods*. The State may submit any proposed amendments to the SAP in writing to the FEMA Regional Director. FEMA shall review the request and respond to the Governor or his/her designee within 45 days of receipt of the proposed amendment;

(ii) *During Presidentially-declared disasters*. The State shall submit any proposed amendments to the SAP in writing to FEMA within three days after disaster declaration. FEMA shall review the request and respond to the Governor or his/her designee within three days of receipt.

(d) *State administrative plan requirements*. The State shall develop a plan for the administration of the Other Needs assistance that describes, at a minimum, the following items:

(1) Assignment of grant program responsibilities to State officials or agencies.

(2) Staffing Schedule that identifies the position, salary and percent of time for each staff person assigned to

program administration and/or implementation.

(3) Procedures for interaction with applicants:

(i) Procedures for notifying potential applicants of the availability of the program, to include the publication of application deadlines, pertinent program descriptions, and further program information on the requirements which must be met by the applicant in order to receive assistance;

(ii) Procedures for registration and acceptance of applications, including late applications, up to the prescribed time limitations as described in § 206.112;

(iii) Procedures for damage inspection and/or other verifications.

(iv) Eligibility determinations.

(A) *Under a cooperative agreement*: The procedure for eligibility determinations when the FEMA application and inspection systems are used by the State but additional eligibility criteria are necessary to make State eligibility determinations.

(B) *Under a grant*: The procedure for eligibility determinations when the FEMA application and inspection systems are not used by the State, including the method for determination of costs for personal property and provision of a standard list for personal property items with allowable costs identified for each item.

(v) Procedures for checking compliance for mandated flood insurance in accordance with § 206.110(k);

(vi) Procedures for notifying applicants of the State's eligibility decision;

(vii) Procedures for disbursement of funds to applicants;

(viii) Procedures for applicant appeal processing. Procedures must provide for any appealable determination as identified in § 206.115(a);

(ix) Procedures for expeditious reporting of allegations of fraud, waste or abuse to FEMA Office of Inspector General.

(x) Capacity to investigate allegations of waste, fraud and abuse independently if requested by FEMA OIG, or in conjunction with FEMA OIG.

(xi) Provisions for safeguarding the privacy of applicants and the confidentiality of information, in accordance with § 206.110(j).

(xii) Provisions for complying with § 206.116(b), Recovery of funds.

(4) Procedures for financial management, accountability and oversight.

(i) Procedures for verifying by random sample that assistance funds are meeting applicants' needs, are not

duplicating assistance from other means, and are meeting flood insurance requirements.

(ii) Provisions for specifically identifying, in the accounts of the State, all Federal and State funds committed to each grant program; and for immediately returning, upon discovery, all Federal funds that are excess to program needs.

(iii) Provisions for accounting for cash in compliance with State law and procedure and the Cash Management Improvement Act of 1990, as amended.

(iv) Reports.

(A) Procedures for preparing and submitting quarterly and final Financial Status Reports in compliance with 44 CFR 13.41.

(B) Procedures for submitting Program Status Reports in compliance with paragraph (f)(2)(iii) of this section.

(C) Procedures for preparing and submitting the PSC 272, Federal Cash Transactions Report.

(v) Procedures for inventory control, including a system for identifying and tracking placement of equipment purchased with grant funds or loaned by FEMA to the State for purposes of administering the Individuals and Households Program.

(vi) Procedures for return of funds to FEMA.

(vii) State criteria and requirements for closing out Federal grants.

(viii) Process for retention of records.

(e) Application for assistance procedure. This section describes the procedures that must be followed by the State to submit an application to administer the Individuals and Households Program through a Grant Award or a Cooperative Agreement.

(1) The State must submit an Other Needs assistance application to the Regional Director within 72 hours of the major disaster declaration before IHP assistance may be provided. FEMA will work with the State to approve the application or to modify it so it can be approved.

(2) The application shall include:

(i) Standard Form (SF) 424,

Application for Federal Assistance;

(ii) FEMA Form (FF) 20-20 Budget Information—Non Construction Programs;

(iii) Copy of approved indirect cost rate from a Federal cognizant agency if indirect costs will be charged to the grant. Indirect costs will be included in the administrative costs of the grant allowed under paragraph (a) of this section; and

(iv) Disaster specific changes to the State Administrative Plan, if applicable.

(f) Grants management oversight.

(1) Period of assistance. All costs must be incurred within the period of

assistance, which is 18 months from the date of the disaster declaration. This period of assistance may be extended if requested in writing by the State and approved in writing by the FEMA Associate Director. The State must include a justification for an extension of the assistance period.

(2) Reporting requirements.

(i) The State shall provide financial status reports, as required by 44 CFR 13.41.

(ii) The State shall provide copies of PSC 272, Federal Cash Transactions Report to FEMA. The PSC 272 is required quarterly by the Department of Health and Human Services from users of its SMARTLINK service.

(iii) The State shall provide weekly program status reports which include the number and dollar amount of applications approved, the amount of assistance disbursed and the number of appeals received.

(3) Ineligible costs. Funds provided to the State for the administrative costs of administering Other Needs assistance shall not be used to pay regular time for State employees, but may be used to pay overtime for those employees.

(4) Closeout. The State has primary responsibility to closeout the tasks approved under the Grant Award. In compliance with the period of assistance, as identified in the award, the State must reconcile costs and payments, resolve negative audit findings, and submit final reports within 90 days of the end of the period of assistance. The State must also provide an inventory of equipment purchased with grant funds and loaned to it by FEMA for purposes of administering IHP, which lists the items, dates, and costs of equipment purchased.

(5) Recovery of funds. The State is responsible for recovering assistance awards from applicants obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, and awards made in error.

(i) Adjustments to expenditures will be made as funding is recovered and will be reported quarterly on the Financial Status Report.

(ii) A list of applicants from whom recoveries are processed will be submitted on the quarterly progress report to allow FEMA to adjust its program and financial information systems.

(iii) The State will reimburse FEMA for the Federal share of awards not recovered through quarterly financial adjustments within the 90 day close out liquidation period of the grant award.

(iv) If the State does not reimburse FEMA within the 90 day close out liquidation period, a bill for collection will be issued. FEMA will charge interest, penalties, and administrative fees on delinquent bills for collection in accordance with the Debt Collection Improvement Act. Recovered funds, interest, penalties, and fees owed to FEMA through delinquent bills for collection may be offset from other FEMA disaster assistance programs from which the State is receiving funds or future grant awards from FEMA or other Federal agencies. Debt collection procedures will be followed as outlined in 44 CFR part 11.

(6) Audit requirements. Pursuant to 44 CFR 13.26, uniform audit requirements apply to all grants provided under this subpart.

(7) Document retention. Pursuant to 44 CFR 13.42, States are required to retain records, including source documentation, to support expenditures/costs incurred against the grant award, for 3 years from the date of submission to FEMA of the final Financial Status Report. The State is responsible for resolving questioned costs that may result from an audit conducted during the three-year record retention period and for returning disallowed costs from ineligible activities.

3. Revise the last sentence of 44 CFR 206.44(a) to read as follows:

“No FEMA funding will be authorized or provided to any grantees or other recipients, nor will direct Federal assistance be authorized by mission assignment, until such time as this Agreement for the Presidential declaration has been signed, except where it is deemed necessary by the Regional Director to begin the process of providing essential emergency services or housing assistance under the Individuals and Households Program.”;

4. Revise 44 CFR 206.62(f) to read as follows:

§ 206.62 Available assistance.

* * * * *

(f) Provide assistance in accordance with section 408 of the Stafford Act; and

* * * * *

5. Revise the heading of 44 CFR 206.101 to read:

§ 206.101 Temporary housing assistance for emergencies and major disasters declared on or before October 14, 2002.

6. 44 CFR 206.101(a) is amended by adding the following phrase at the end of paragraph (a):

“for Presidentially-declared emergencies and major disasters

declared on or before October 14, 2002 (Note that the reference to section 408 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000).”

7. Revise the heading of 44 CFR 206.131 to read as follows:

“Individual and Family Grant Program for major disasters declared on or before October 14, 2002.”

8. Amend 44 CFR 206.131(a) by adding the following phrase at the end of the first sentence: “for Presidentially-declared major disasters declared on or before October 14, 2002 (Note that the reference to section 411 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000).”

9. Revise 44 CFR 206.191(d)(2)(ii) & (iv) to read as follows:

§ 206.191 Duplication of benefits.

* * * * *

(d) * * *

(2) * * *

(ii) Housing assistance pursuant to section 408 of the Stafford Act.

* * * * *

(iv) Other Needs assistance, pursuant to section 408 of the Stafford Act or its predecessor program, the Individual and Family Grant Program.

* * * * *

Dated: September 25, 2002.

John R. D’Araujo, Jr.,

Assistant Director, Response and Recovery Directorate.

[FR Doc. 02-24733 Filed 9-27-02; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067-AD31

National Flood Insurance Program (NFIP); Group Flood Insurance Policy (GFIP)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule.

SUMMARY: We (the Federal Insurance and Mitigation Administration of FEMA) are amending the Group Flood Insurance Policy (GFIP), as a result of the consolidation of sections 408 and 411 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) by the Disaster Mitigation Act of 2000, which created a new disaster assistance program.

DATES: *Effective Date:* This rule is effective September 30, 2002.