APPENDIX F

HAZUS-MH Risk Assessment Tool Flood Result

The flood risk assessment was run using the HAZUS-MH Flood Macro, using FEMA Quality 3 (Q3) data. The following table presents the building stock exposure and estimated losses for the 100- and 500-year flood events:

Flood Wizard Results

Building Exposure (x$1,000)	Population	Residential	Commercial	Industrial	Agricultural	Religion	Government	Education
100-year	2440	109,124.90	20,403.10	315.9	224.4	1,749.50	0	268.1
500-year	3900	174,667.10	23,564.60	427.1	334.3	2,144.40	0	806.2

Content Exposure (x$1,000)	Population	Residential	Commercial	Industrial	Agricultural	Religion	Government	Education
100-year	2440	54,565.10	21,483.90	319.2	224.4	1,749.50	0	375.9
500-year	3900	87,337.40	24,750.80	433.7	334.3	2,144.40	0	921.1

Total Exposure (x$1,000)	Population	Residential	Commercial	Industrial	Agricultural	Religion	Government	Education
100-year	2440	163,690.00	41,887.00	635.1	448.8	3,499.00	0	644
500-year	3900	262,004.50	48,315.40	860.8	668.6	4,288.80	0	1,727.30

Building Count	Residential	Commercial	Industrial	Agricultural	Religion	Government	Education
100-year	902	14	0	0	1	0	0
500-year	1316	16	0	0	1	0	0

Building Loss (x$1,000)	Residential	Commercial	Industrial	Agricultural	Religion	Government	Education
100-year	726.3	850.3	4.7	5.6	17.7	0	26
500-year	1,676.80	2,327.60	11.8	24.7	61.5	0	69.6

Content Loss (x$1,000)	Residential	Commercial	Industrial	Agricultural	Religion	Government	Education
100-year	1,553.70	611.10	4.5	3.6	16.7	0	12.2
500-year	3,581.00	1,736.30	11.5	18.8	56.9	0	35.2

Total Loss (x$1,000)	Residential	Commercial	Industrial	Agricultural	Religion	Government	Education
100-year	2,280.00	1,461.40	9.2	9.2	34.4	0	38.2
500-year	5,257.80	4,063.90	23.3	43.5	118.4	0	104.8

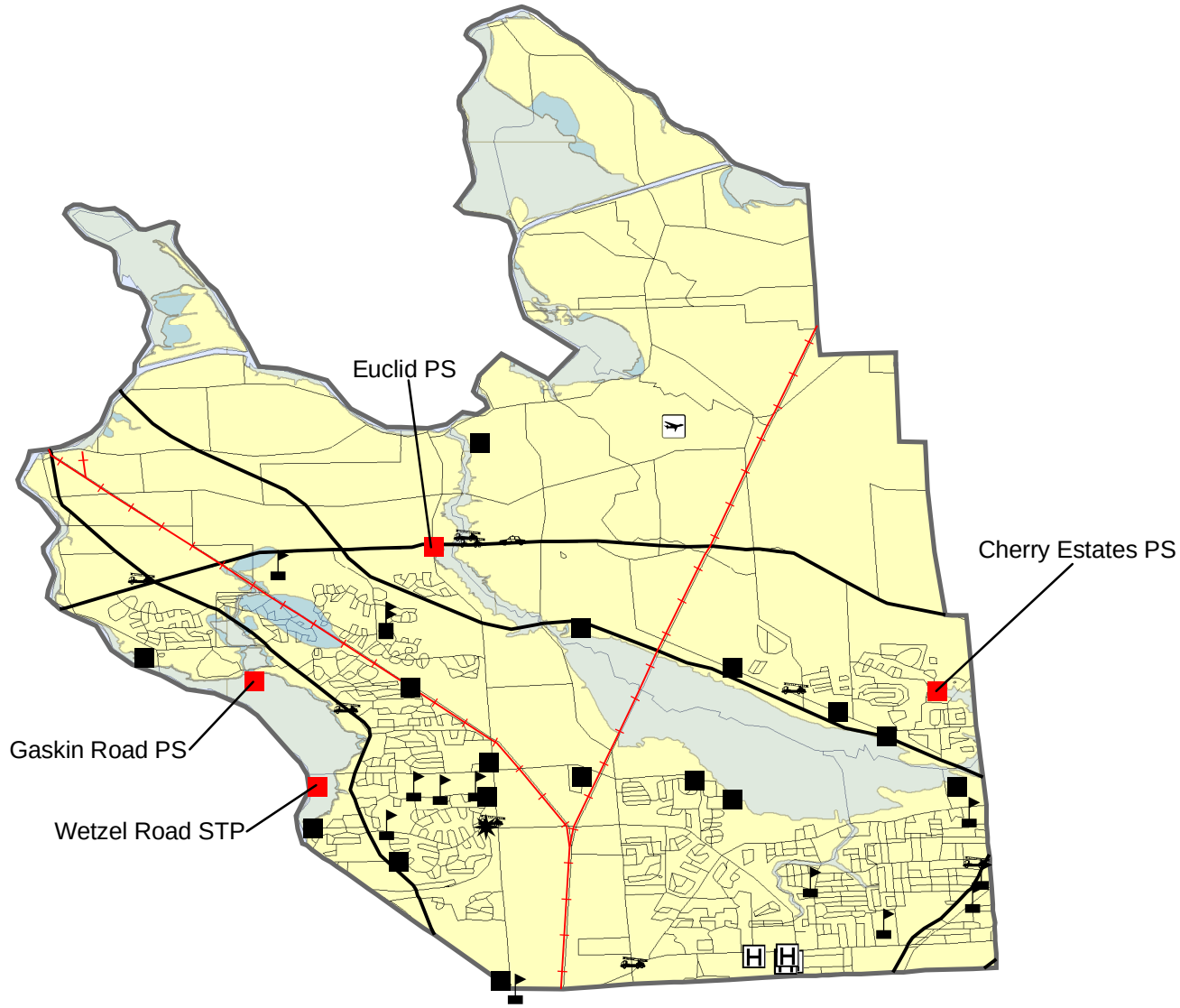
With respect to critical facilities in the Town of Clay, the only critical facilities within the floodplain were four wastewater facilities (one treatment plant and three pump stations). The calculated losses, by percent, were estimated as follows:

The Gaskin Road PS is most effected with 100-year did about 15% damage and 500-year about 25% damage.
The Wetzel Road STP was next with 100-year did about 9% damage and 500-year about 11% damage.
The Cherry Estates PS and the Euclid PS had about 5% damage for 100-year and 500-yeard about 8%.

The dollar value loss would be calculated using the actual facility value and the estimated percent loss.

Town of Clay
Critical Facilities and Quality 3 (Q3) Data

TETRA TECH, INC.



Legend

- Railroad
- Highway
- Study Region
- Census Blocks
- 100-Year Flood
- 500-Year Flood
- Police Stations
- EMS
- Fire Stations
- Medical Facilities
- Schools
- Airport
- Wastewater Facilities
- Wastewater Facilities (In Floodplain)

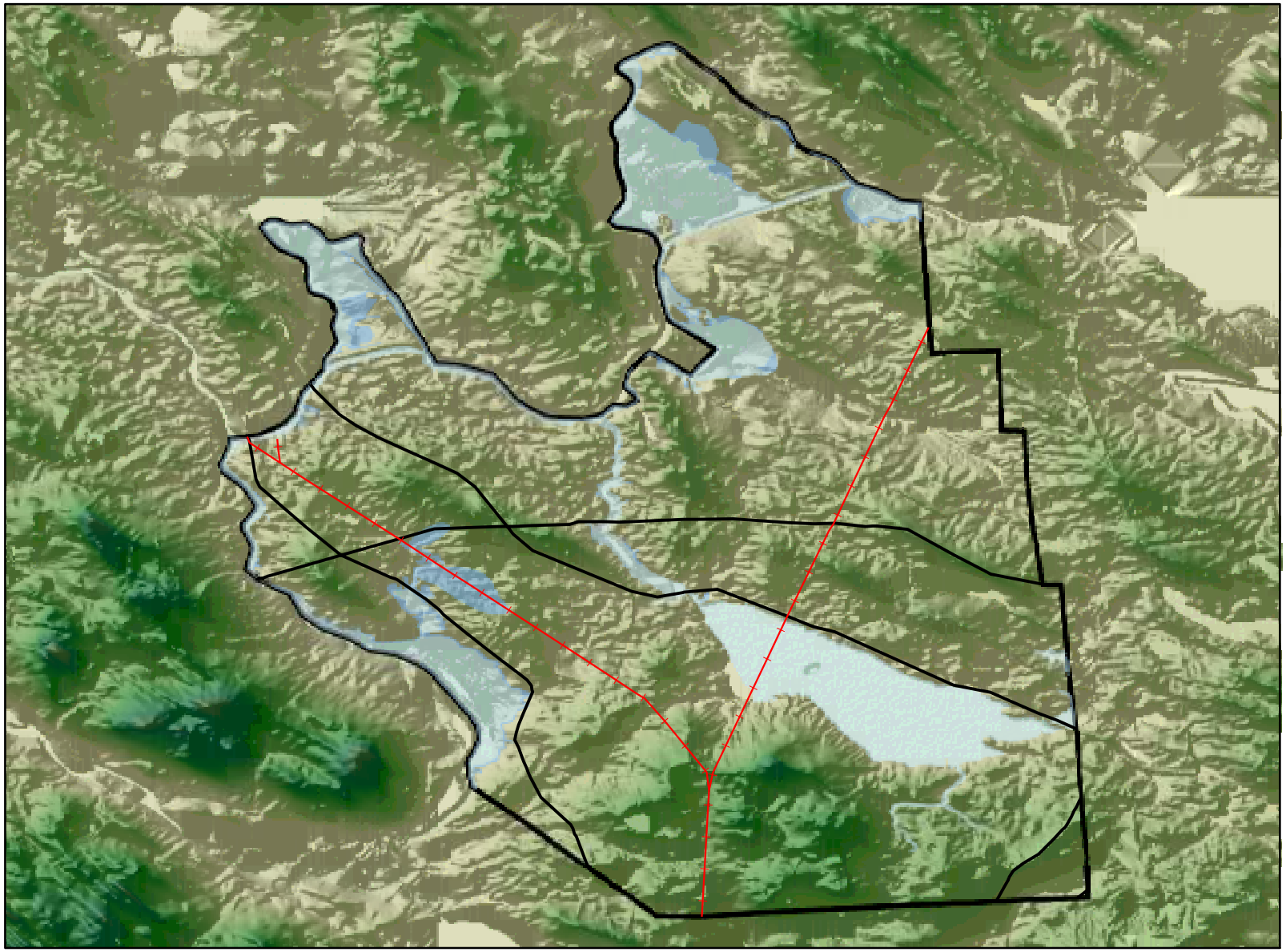
0 1.25 2.5 5 7.5 10 Miles

N W E S

(c) 1997-2004 FEMA.

Town of Clay
Digital Elevation Model and Quality 3 (Q3) Data

TETRATECH, INC.



Legend

- Railroad
- Highway
- Study Region
- 100-Year Floodplain
- 500-Year Floodplain

Elevation (m)

High : 526

Low : 74

0 1.25 2.5 5 7.5 10 Miles

HAZUS MH

(c) 1997-2004 FEMA.

PUBLIC LAW 106–390—OCT. 30, 2000

DISASTER MITIGATION ACT OF 2000

Public Law 106–390
106th Congress

An Act

Oct. 30, 2000
[H.R. 707]

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize a program for predisaster mitigation, to streamline the administration of disaster relief, to control the Federal costs of disaster assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Disaster Mitigation Act of 2000.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

42 USC 5121 note.

(a) SHORT TITLE.—This Act may be cited as the "Disaster Mitigation Act of 2000".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—PREDISASTER HAZARD MITIGATION

Sec. 101. Findings and purpose.
Sec. 102. Predisaster hazard mitigation.
Sec. 103. Interagency task force.
Sec. 104. Mitigation planning; minimum standards for public and private structures.

TITLE II—STREAMLINING AND COST REDUCTION

Sec. 201. Technical amendments.
Sec. 202. Management costs.
Sec. 203. Public notice, comment, and consultation requirements.
Sec. 204. State administration of hazard mitigation grant program.
Sec. 205. Assistance to repair, restore, reconstruct, or replace damaged facilities.
Sec. 206. Federal assistance to individuals and households.
Sec. 207. Community disaster loans.
Sec. 208. Report on State management of small disasters initiative.
Sec. 209. Study regarding cost reduction.

TITLE III—MISCELLANEOUS

Sec. 301. Technical correction of short title.
Sec. 302. Definitions.
Sec. 303. Fire management assistance.
Sec. 304. Disaster grant closeout procedures.
Sec. 305. Public safety officer benefits for certain Federal and State employees.
Sec. 306. Buy American.
Sec. 307. Treatment of certain real property.
Sec. 308. Study of participation by Indian tribes in emergency management.

TITLE I—PREDISASTER HAZARD MITIGATION

42 USC 5133 note.

SEC. 101. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) natural disasters, including earthquakes, tsunamis, tornadoes, hurricanes, flooding, and wildfires, pose great danger to human life and to property throughout the United States;

(2) greater emphasis needs to be placed on—

(A) identifying and assessing the risks to States and local governments (including Indian tribes) from natural disasters;

(B) implementing adequate measures to reduce losses from natural disasters; and

(C) ensuring that the critical services and facilities of communities will continue to function after a natural disaster;

(3) expenditures for postdisaster assistance are increasing without commensurate reductions in the likelihood of future losses from natural disasters;

(4) in the expenditure of Federal funds under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), high priority should be given to mitigation of hazards at the local level; and

(5) with a unified effort of economic incentives, awareness and education, technical assistance, and demonstrated Federal support, States and local governments (including Indian tribes) will be able to—

(A) form effective community-based partnerships for hazard mitigation purposes;

(B) implement effective hazard mitigation measures that reduce the potential damage from natural disasters;

(C) ensure continued functionality of critical services;

(D) leverage additional non-Federal resources in meeting natural disaster resistance goals; and

(E) make commitments to long-term hazard mitigation efforts to be applied to new and existing structures.

(b) PURPOSE.—The purpose of this title is to establish a national disaster hazard mitigation program—

(1) to reduce the loss of life and property, human suffering, economic disruption, and disaster assistance costs resulting from natural disasters; and

(2) to provide a source of predisaster hazard mitigation funding that will assist States and local governments (including Indian tribes) in implementing effective hazard mitigation measures that are designed to ensure the continued functionality of critical services and facilities after a natural disaster.

SEC. 102. PREDISASTER HAZARD MITIGATION.

(a) IN GENERAL.—Title II of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131 et seq.) is amended by adding at the end the following:

"SEC. 203. PREDISASTER HAZARD MITIGATION.

President.
42 USC 5133.

"(a) DEFINITION OF SMALL IMPOVERISHED COMMUNITY.—In this section, the term 'small impoverished community' means a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the State in which the community is located and based on criteria established by the President.

"(b) ESTABLISHMENT OF PROGRAM.—The President may establish a program to provide technical and financial assistance to States and local governments to assist in the implementation of

predisaster hazard mitigation measures that are cost-effective and are designed to reduce injuries, loss of life, and damage and destruction of property, including damage to critical services and facilities under the jurisdiction of the States or local governments.

"(c) APPROVAL BY PRESIDENT.—If the President determines that a State or local government has identified natural disaster hazards in areas under its jurisdiction and has demonstrated the ability to form effective public-private natural disaster hazard mitigation partnerships, the President, using amounts in the National Predisaster Mitigation Fund established under subsection (i) (referred to in this section as the 'Fund'), may provide technical and financial assistance to the State or local government to be used in accordance with subsection (e).

"(d) STATE RECOMMENDATIONS.—

"(1) IN GENERAL.—

"(A) RECOMMENDATIONS.—The Governor of each State may recommend to the President not fewer than five local governments to receive assistance under this section.

"(B) DEADLINE FOR SUBMISSION.—The recommendations under subparagraph (A) shall be submitted to the President not later than October 1, 2001, and each October 1st thereafter or such later date in the year as the President may establish.

"(C) CRITERIA.—In making recommendations under subparagraph (A), a Governor shall consider the criteria specified in subsection (g).

"(2) USE.—

President.

"(A) IN GENERAL.—Except as provided in subparagraph (B), in providing assistance to local governments under this section, the President shall select from local governments recommended by the Governors under this subsection.

"(B) EXTRAORDINARY CIRCUMSTANCES.—In providing assistance to local governments under this section, the President may select a local government that has not been recommended by a Governor under this subsection if the President determines that extraordinary circumstances justify the selection and that making the selection will further the purpose of this section.

"(3) EFFECT OF FAILURE TO NOMINATE.—If a Governor of a State fails to submit recommendations under this subsection in a timely manner, the President may select, subject to the criteria specified in subsection (g), any local governments of the State to receive assistance under this section.

"(e) USES OF TECHNICAL AND FINANCIAL ASSISTANCE.—

"(1) IN GENERAL.—Technical and financial assistance provided under this section—

"(A) shall be used by States and local governments principally to implement predisaster hazard mitigation measures that are cost-effective and are described in proposals approved by the President under this section; and

"(B) may be used—

"(i) to support effective public-private natural disaster hazard mitigation partnerships;

"(ii) to improve the assessment of a community's vulnerability to natural hazards; or

"(iii) to establish hazard mitigation priorities, and an appropriate hazard mitigation plan, for a community.

"(2) DISSEMINATION.—A State or local government may use not more than 10 percent of the financial assistance received by the State or local government under this section for a fiscal year to fund activities to disseminate information regarding cost-effective mitigation technologies.

"(f) ALLOCATION OF FUNDS.—The amount of financial assistance made available to a State (including amounts made available to local governments of the State) under this section for a fiscal year—

"(1) shall be not less than the lesser of—

"(A) $500,000; or

"(B) the amount that is equal to 1.0 percent of the total funds appropriated to carry out this section for the fiscal year;

"(2) shall not exceed 15 percent of the total funds described in paragraph (1)(B); and

"(3) shall be subject to the criteria specified in subsection (g).

"(g) CRITERIA FOR ASSISTANCE AWARDS.—In determining whether to provide technical and financial assistance to a State or local government under this section, the President shall take into account—

"(1) the extent and nature of the hazards to be mitigated;

"(2) the degree of commitment of the State or local government to reduce damages from future natural disasters;

"(3) the degree of commitment by the State or local government to support ongoing non-Federal support for the hazard mitigation measures to be carried out using the technical and financial assistance;

"(4) the extent to which the hazard mitigation measures to be carried out using the technical and financial assistance contribute to the mitigation goals and priorities established by the State;

"(5) the extent to which the technical and financial assistance is consistent with other assistance provided under this Act;

"(6) the extent to which prioritized, cost-effective mitigation activities that produce meaningful and definable outcomes are clearly identified;

"(7) if the State or local government has submitted a mitigation plan under section 322, the extent to which the activities identified under paragraph (6) are consistent with the mitigation plan;

"(8) the opportunity to fund activities that maximize net benefits to society;

"(9) the extent to which assistance will fund mitigation activities in small impoverished communities; and

"(10) such other criteria as the President establishes in consultation with State and local governments. President.

"(h) FEDERAL SHARE.—

"(1) IN GENERAL.—Financial assistance provided under this section may contribute up to 75 percent of the total cost of mitigation activities approved by the President.

"(2) SMALL IMPOVERISHED COMMUNITIES.—Notwithstanding paragraph (1), the President may contribute up to 90 percent of the total cost of a mitigation activity carried out in a small impoverished community.

"(i) NATIONAL PREDISASTER MITIGATION FUND.—

"(1) ESTABLISHMENT.—The President may establish in the Treasury of the United States a fund to be known as the 'National Predisaster Mitigation Fund', to be used in carrying out this section.

"(2) TRANSFERS TO FUND.—There shall be deposited in the Fund—

"(A) amounts appropriated to carry out this section, which shall remain available until expended; and

"(B) sums available from gifts, bequests, or donations of services or property received by the President for the purpose of predisaster hazard mitigation.

"(3) EXPENDITURES FROM FUND.—Upon request by the President, the Secretary of the Treasury shall transfer from the Fund to the President such amounts as the President determines are necessary to provide technical and financial assistance under this section.

"(4) INVESTMENT OF AMOUNTS.—

"(A) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

"(B) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under subparagraph (A), obligations may be acquired—

"(i) on original issue at the issue price; or

"(ii) by purchase of outstanding obligations at the market price.

"(C) SALE OF OBLIGATIONS.—Any obligation acquired by the Fund may be sold by the Secretary of the Treasury at the market price.

"(D) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

"(E) TRANSFERS OF AMOUNTS.—

"(i) IN GENERAL.—The amounts required to be transferred to the Fund under this subsection shall be transferred at least monthly from the general fund of the Treasury to the Fund on the basis of estimates made by the Secretary of the Treasury.

"(ii) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

"(j) LIMITATION ON TOTAL AMOUNT OF FINANCIAL ASSISTANCE.—The President shall not provide financial assistance under this section in an amount greater than the amount available in the Fund.

"(k) MULTIHAZARD ADVISORY MAPS.—

"(1) DEFINITION OF MULTIHAZARD ADVISORY MAP.—In this subsection, the term 'multihazard advisory map' means a map

on which hazard data concerning each type of natural disaster is identified simultaneously for the purpose of showing areas of hazard overlap.

"(2) DEVELOPMENT OF MAPS.—In consultation with States, local governments, and appropriate Federal agencies, the President shall develop multihazard advisory maps for areas, in not fewer than five States, that are subject to commonly recurring natural hazards (including flooding, hurricanes and severe winds, and seismic events). President.

"(3) USE OF TECHNOLOGY.—In developing multihazard advisory maps under this subsection, the President shall use, to the maximum extent practicable, the most cost-effective and efficient technology available.

"(4) USE OF MAPS.—

"(A) ADVISORY NATURE.—The multihazard advisory maps shall be considered to be advisory and shall not require the development of any new policy by, or impose any new policy on, any government or private entity.

"(B) AVAILABILITY OF MAPS.—The multihazard advisory maps shall be made available to the appropriate State and local governments for the purposes of—

"(i) informing the general public about the risks of natural hazards in the areas described in paragraph (2);

"(ii) supporting the activities described in subsection (e); and

"(iii) other public uses.

"(l) REPORT ON FEDERAL AND STATE ADMINISTRATION.—Not later than 18 months after the date of the enactment of this section, the President, in consultation with State and local governments, shall submit to Congress a report evaluating efforts to implement this section and recommending a process for transferring greater authority and responsibility for administering the assistance program established under this section to capable States. Deadline.

"(m) TERMINATION OF AUTHORITY.—The authority provided by this section terminates December 31, 2003.".

(b) CONFORMING AMENDMENT.—Title II of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131 et seq.) is amended by striking the title heading and inserting the following:

"TITLE II—DISASTER PREPAREDNESS AND MITIGATION ASSISTANCE".

SEC. 103. INTERAGENCY TASK FORCE.

Title II of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5131 et seq.) (as amended by section 102(a)) is amended by adding at the end the following:

"SEC. 204. INTERAGENCY TASK FORCE. 42 USC 5134.

"(a) IN GENERAL.—The President shall establish a Federal interagency task force for the purpose of coordinating the implementation of predisaster hazard mitigation programs administered by the Federal Government.

"(b) CHAIRPERSON.—The Director of the Federal Emergency Management Agency shall serve as the chairperson of the task force.

"(c) MEMBERSHIP.—The membership of the task force shall include representatives of—

"(1) relevant Federal agencies;

"(2) State and local government organizations (including Indian tribes); and

"(3) the American Red Cross.".

SEC. 104. MITIGATION PLANNING; MINIMUM STANDARDS FOR PUBLIC AND PRIVATE STRUCTURES.

(a) IN GENERAL.—Title III of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5141 et seq.) is amended by adding at the end the following:

42 USC 5165.

"SEC. 322. MITIGATION PLANNING.

"(a) REQUIREMENT OF MITIGATION PLAN.—As a condition of receipt of an increased Federal share for hazard mitigation measures under subsection (e), a State, local, or tribal government shall develop and submit for approval to the President a mitigation plan that outlines processes for identifying the natural hazards, risks, and vulnerabilities of the area under the jurisdiction of the government.

"(b) LOCAL AND TRIBAL PLANS.—Each mitigation plan developed by a local or tribal government shall—

"(1) describe actions to mitigate hazards, risks, and vulnerabilities identified under the plan; and

"(2) establish a strategy to implement those actions.

"(c) STATE PLANS.—The State process of development of a mitigation plan under this section shall—

"(1) identify the natural hazards, risks, and vulnerabilities of areas in the State;

"(2) support development of local mitigation plans;

"(3) provide for technical assistance to local and tribal governments for mitigation planning; and

"(4) identify and prioritize mitigation actions that the State will support, as resources become available.

"(d) FUNDING.—

"(1) IN GENERAL.—Federal contributions under section 404 may be used to fund the development and updating of mitigation plans under this section.

"(2) MAXIMUM FEDERAL CONTRIBUTION.—With respect to any mitigation plan, a State, local, or tribal government may use an amount of Federal contributions under section 404 not to exceed 7 percent of the amount of such contributions available to the government as of a date determined by the government.

"(e) INCREASED FEDERAL SHARE FOR HAZARD MITIGATION MEASURES.—

"(1) IN GENERAL.—If, at the time of the declaration of a major disaster, a State has in effect an approved mitigation plan under this section, the President may increase to 20 percent, with respect to the major disaster, the maximum percentage specified in the last sentence of section 404(a).

President.

"(2) FACTORS FOR CONSIDERATION.—In determining whether to increase the maximum percentage under paragraph (1), the President shall consider whether the State has established—

"(A) eligibility criteria for property acquisition and other types of mitigation measures;

"(B) requirements for cost effectiveness that are related to the eligibility criteria;

"(C) a system of priorities that is related to the eligibility criteria; and

"(D) a process by which an assessment of the effectiveness of a mitigation action may be carried out after the mitigation action is complete.

"SEC. 323. MINIMUM STANDARDS FOR PUBLIC AND PRIVATE STRUCTURES. 42 USC 5165a.

"(a) IN GENERAL.—As a condition of receipt of a disaster loan or grant under this Act—

"(1) the recipient shall carry out any repair or construction to be financed with the loan or grant in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards; and

"(2) the President may require safe land use and construction practices, after adequate consultation with appropriate State and local government officials.

"(b) EVIDENCE OF COMPLIANCE.—A recipient of a disaster loan or grant under this Act shall provide such evidence of compliance with this section as the President may require by regulation.".

(b) LOSSES FROM STRAIGHT LINE WINDS.—The President shall increase the maximum percentage specified in the last sentence of section 404(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(a)) from 15 percent to 20 percent with respect to any major disaster that is in the State of Minnesota and for which assistance is being provided as of the date of the enactment of this Act, except that additional assistance provided under this subsection shall not exceed $6,000,000. The mitigation measures assisted under this subsection shall be related to losses in the State of Minnesota from straight line winds. President.

(c) CONFORMING AMENDMENTS.—

(1) Section 404(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c(a)) is amended—

(A) in the second sentence, by striking "section 409" and inserting "section 322"; and

(B) in the third sentence, by striking "The total" and inserting "Subject to section 322, the total".

(2) Section 409 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5176) is repealed.

TITLE II—STREAMLINING AND COST REDUCTION

SEC. 201. TECHNICAL AMENDMENTS.

Section 311 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5154) is amended in subsections (a)(1), (b), and (c) by striking "section 803 of the Public Works and Economic Development Act of 1965" each place it appears

and inserting "section 209(c)(2) of the Public Works and Economic Development Act of 1965 (42 U.S.C. 3149(c)(2))".

SEC. 202. MANAGEMENT COSTS.

(a) IN GENERAL.—Title III of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5141 et seq.) (as amended by section 104(a)) is amended by adding at the end the following:

42 USC 5165b.

"SEC. 324. MANAGEMENT COSTS.

"(a) DEFINITION OF MANAGEMENT COST.—In this section, the term 'management cost' includes any indirect cost, any administrative expense, and any other expense not directly chargeable to a specific project under a major disaster, emergency, or disaster preparedness or mitigation activity or measure.

Regulations.

"(b) ESTABLISHMENT OF MANAGEMENT COST RATES.—Notwithstanding any other provision of law (including any administrative rule or guidance), the President shall by regulation establish management cost rates, for grantees and subgrantees, that shall be used to determine contributions under this Act for management costs.

Deadline.

"(c) REVIEW.—The President shall review the management cost rates established under subsection (b) not later than 3 years after the date of establishment of the rates and periodically thereafter.".

42 USC 5165b note.

(b) APPLICABILITY.—

(1) IN GENERAL.—Subject to paragraph (2), subsections (a) and (b) of section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by subsection (a)) shall apply to major disasters declared under that Act on or after the date of the enactment of this Act.

(2) INTERIM AUTHORITY.—Until the date on which the President establishes the management cost rates under section 324 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as added by subsection (a)), section 406(f) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172(f)) (as in effect on the day before the date of the enactment of this Act) shall be used to establish management cost rates.

SEC. 203. PUBLIC NOTICE, COMMENT, AND CONSULTATION REQUIREMENTS.

Title III of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5141 et seq.) (as amended by section 202(a)) is amended by adding at the end the following:

42 USC 5165c.

"SEC. 325. PUBLIC NOTICE, COMMENT, AND CONSULTATION REQUIREMENTS.

"(a) PUBLIC NOTICE AND COMMENT CONCERNING NEW OR MODIFIED POLICIES.—

President.

"(1) IN GENERAL.—The President shall provide for public notice and opportunity for comment before adopting any new or modified policy that—

"(A) governs implementation of the public assistance program administered by the Federal Emergency Management Agency under this Act; and

"(B) could result in a significant reduction of assistance under the program.

"(2) APPLICATION.—Any policy adopted under paragraph (1) shall apply only to a major disaster or emergency declared on or after the date on which the policy is adopted.

"(b) CONSULTATION CONCERNING INTERIM POLICIES.—

"(1) IN GENERAL.—Before adopting any interim policy under the public assistance program to address specific conditions that relate to a major disaster or emergency that has been declared under this Act, the President, to the maximum extent practicable, shall solicit the views and recommendations of grantees and subgrantees with respect to the major disaster or emergency concerning the potential interim policy, if the interim policy is likely—

"(A) to result in a significant reduction of assistance to applicants for the assistance with respect to the major disaster or emergency; or

"(B) to change the terms of a written agreement to which the Federal Government is a party concerning the declaration of the major disaster or emergency.

"(2) NO LEGAL RIGHT OF ACTION.—Nothing in this subsection confers a legal right of action on any party.

"(c) PUBLIC ACCESS.—The President shall promote public access to policies governing the implementation of the public assistance program.". President.

SEC. 204. STATE ADMINISTRATION OF HAZARD MITIGATION GRANT PROGRAM.

Section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170c) is amended by adding at the end the following:

"(c) PROGRAM ADMINISTRATION BY STATES.—

"(1) IN GENERAL.—A State desiring to administer the hazard mitigation grant program established by this section with respect to hazard mitigation assistance in the State may submit to the President an application for the delegation of the authority to administer the program.

"(2) CRITERIA.—The President, in consultation and coordination with States and local governments, shall establish criteria for the approval of applications submitted under paragraph (1). The criteria shall include, at a minimum—

"(A) the demonstrated ability of the State to manage the grant program under this section;

"(B) there being in effect an approved mitigation plan under section 322; and

"(C) a demonstrated commitment to mitigation activities.

"(3) APPROVAL.—The President shall approve an application submitted under paragraph (1) that meets the criteria established under paragraph (2). President.

"(4) WITHDRAWAL OF APPROVAL.—If, after approving an application of a State submitted under paragraph (1), the President determines that the State is not administering the hazard mitigation grant program established by this section in a manner satisfactory to the President, the President shall withdraw the approval.

"(5) AUDITS.—The President shall provide for periodic audits of the hazard mitigation grant programs administered by States under this subsection.". President.

SEC. 205. ASSISTANCE TO REPAIR, RESTORE, RECONSTRUCT, OR REPLACE DAMAGED FACILITIES.

(a) CONTRIBUTIONS.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (a) and inserting the following:

"(a) CONTRIBUTIONS.—

"(1) IN GENERAL.—The President may make contributions—

"(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

"(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

"(2) ASSOCIATED EXPENSES.—For the purposes of this section, associated expenses shall include—

"(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

"(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and

"(C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.

"(3) CONDITIONS FOR ASSISTANCE TO PRIVATE NONPROFIT FACILITIES.—

"(A) IN GENERAL.—The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if—

"(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or

"(ii) the owner or operator of the facility—

"(I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and

"(II)(aa) has been determined to be ineligible for such a loan; or

"(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

"(B) DEFINITION OF CRITICAL SERVICES.—In this paragraph, the term 'critical services' includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, and emergency medical care.

"(4) NOTIFICATION TO CONGRESS.—Before making any contribution under this section in an amount greater than $20,000,000, the President shall notify—

"(A) the Committee on Environment and Public Works of the Senate;

"(B) the Committee on Transportation and Infrastructure of the House of Representatives;

"(C) the Committee on Appropriations of the Senate; and

"(D) the Committee on Appropriations of the House of Representatives.".

(b) FEDERAL SHARE.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (b) and inserting the following:

"(b) FEDERAL SHARE.—

"(1) MINIMUM FEDERAL SHARE.—Except as provided in paragraph (2), the Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of repair, restoration, reconstruction, or replacement carried out under this section.

"(2) REDUCED FEDERAL SHARE.—The President shall promulgate regulations to reduce the Federal share of assistance under this section to not less than 25 percent in the case of the repair, restoration, reconstruction, or replacement of any eligible public facility or private nonprofit facility following an event associated with a major disaster— President. Regulations.

"(A) that has been damaged, on more than one occasion within the preceding 10-year period, by the same type of event; and

"(B) the owner of which has failed to implement appropriate mitigation measures to address the hazard that caused the damage to the facility.".

(c) LARGE IN-LIEU CONTRIBUTIONS.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (c) and inserting the following:

"(c) LARGE IN-LIEU CONTRIBUTIONS.—

"(1) FOR PUBLIC FACILITIES.—

"(A) IN GENERAL.—In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

"(B) AREAS WITH UNSTABLE SOIL.—In any case in which a State or local government determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing any public facility owned or controlled by the State or local government because soil instability in the disaster area makes repair, restoration, reconstruction, or replacement infeasible, the State or local government may elect to receive, in lieu of a contribution under subsection (a)(1)(A), a contribution in an amount equal to 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

"(C) USE OF FUNDS.—Funds contributed to a State or local government under this paragraph may be used—

"(i) to repair, restore, or expand other selected public facilities;

"(ii) to construct new facilities; or

"(iii) to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster.

"(D) LIMITATIONS.—Funds made available to a State or local government under this paragraph may not be used for—

"(i) any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

"(ii) any uninsured public facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).

"(2) FOR PRIVATE NONPROFIT FACILITIES.—

"(A) IN GENERAL.—In any case in which a person that owns or operates a private nonprofit facility determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the facility, the person may elect to receive, in lieu of a contribution under subsection (a)(1)(B), a contribution in an amount equal to 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

"(B) USE OF FUNDS.—Funds contributed to a person under this paragraph may be used—

"(i) to repair, restore, or expand other selected private nonprofit facilities owned or operated by the person;

"(ii) to construct new private nonprofit facilities to be owned or operated by the person; or

"(iii) to fund hazard mitigation measures that the person determines to be necessary to meet a need for the person's services and functions in the area affected by the major disaster.

"(C) LIMITATIONS.—Funds made available to a person under this paragraph may not be used for—

"(i) any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)); or

"(ii) any uninsured private nonprofit facility located in a special flood hazard area identified by the Director of the Federal Emergency Management Agency under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.).".

(d) ELIGIBLE COST.—

(1) IN GENERAL.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (e) and inserting the following:

"(e) ELIGIBLE COST.—

"(1) DETERMINATION.—

"(A) IN GENERAL.—For the purposes of this section, the President shall estimate the eligible cost of repairing, restoring, reconstructing, or replacing a public facility or private nonprofit facility—

"(i) on the basis of the design of the facility as the facility existed immediately before the major disaster; and

"(ii) in conformity with codes, specifications, and standards (including floodplain management and hazard mitigation criteria required by the President or under the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.)) applicable at the time at which the disaster occurred.

"(B) COST ESTIMATION PROCEDURES.—

"(i) IN GENERAL.—Subject to paragraph (2), the President shall use the cost estimation procedures established under paragraph (3) to determine the eligible cost under this subsection.

"(ii) APPLICABILITY.—The procedures specified in this paragraph and paragraph (2) shall apply only to projects the eligible cost of which is equal to or greater than the amount specified in section 422.

"(2) MODIFICATION OF ELIGIBLE COST.—

"(A) ACTUAL COST GREATER THAN CEILING PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is greater than the ceiling percentage established under paragraph (3) of the cost estimated under paragraph (1), the President may determine that the eligible cost includes a portion of the actual cost of the repair, restoration, reconstruction, or replacement that exceeds the cost estimated under paragraph (1).

"(B) ACTUAL COST LESS THAN ESTIMATED COST.—

"(i) GREATER THAN OR EQUAL TO FLOOR PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than 100 percent of the cost estimated under paragraph (1), but is greater than or equal to the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving funds under this section shall use the excess funds to carry out cost-effective activities that reduce the risk of future damage, hardship, or suffering from a major disaster.

"(ii) LESS THAN FLOOR PERCENTAGE OF ESTIMATED COST.—In any case in which the actual cost of repairing, restoring, reconstructing, or replacing a facility under this section is less than the floor percentage established under paragraph (3) of the cost estimated under paragraph (1), the State or local government or person receiving assistance under this section shall reimburse the President in the amount of the difference.

"(C) NO EFFECT ON APPEALS PROCESS.—Nothing in this paragraph affects any right of appeal under section 423.

"(3) EXPERT PANEL.—

"(A) ESTABLISHMENT.—Not later than 18 months after the date of the enactment of this paragraph, the President, acting through the Director of the Federal Emergency Management Agency, shall establish an expert panel, which shall include representatives from the construction industry and State and local government.

"(B) DUTIES.—The expert panel shall develop recommendations concerning—

"(i) procedures for estimating the cost of repairing, restoring, reconstructing, or replacing a facility consistent with industry practices; and

"(ii) the ceiling and floor percentages referred to in paragraph (2).

President.

"(C) REGULATIONS.—Taking into account the recommendations of the expert panel under subparagraph (B), the President shall promulgate regulations that establish—

"(i) cost estimation procedures described in subparagraph (B)(i); and

"(ii) the ceiling and floor percentages referred to in paragraph (2).

Deadline.

"(D) REVIEW BY PRESIDENT.—Not later than 2 years after the date of promulgation of regulations under subparagraph (C) and periodically thereafter, the President shall review the cost estimation procedures and the ceiling and floor percentages established under this paragraph.

Deadline.

"(E) REPORT TO CONGRESS.—Not later than 1 year after the date of promulgation of regulations under subparagraph (C), 3 years after that date, and at the end of each 2-year period thereafter, the expert panel shall submit to Congress a report on the appropriateness of the cost estimation procedures.

"(4) SPECIAL RULE.—In any case in which the facility being repaired, restored, reconstructed, or replaced under this section was under construction on the date of the major disaster, the cost of repairing, restoring, reconstructing, or replacing the facility shall include, for the purposes of this section, only those costs that, under the contract for the construction, are the owner's responsibility and not the contractor's responsibility.".

42 USC 5172 note.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) takes effect on the date of the enactment of this Act and applies to funds appropriated after the date of the enactment of this Act, except that paragraph (1) of section 406(e) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (as amended by paragraph (1)) takes effect on the date on which the cost estimation procedures established under paragraph (3) of that section take effect.

(e) CONFORMING AMENDMENT.—Section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172) is amended by striking subsection (f).

SEC. 206. FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS.

(a) IN GENERAL.—Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5174) is amended to read as follows:

"SEC. 408. FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS.

"(a) IN GENERAL.—

"(1) PROVISION OF ASSISTANCE.—In accordance with this section, the President, in consultation with the Governor of a State, may provide financial assistance, and, if necessary, direct services, to individuals and households in the State who, as a direct result of a major disaster, have necessary expenses and serious needs in cases in which the individuals and households are unable to meet such expenses or needs through other means.

"(2) RELATIONSHIP TO OTHER ASSISTANCE.—Under paragraph (1), an individual or household shall not be denied assistance under paragraph (1), (3), or (4) of subsection (c) solely on the basis that the individual or household has not applied for or received any loan or other financial assistance from the Small Business Administration or any other Federal agency.

"(b) HOUSING ASSISTANCE.—

"(1) ELIGIBILITY.—The President may provide financial or other assistance under this section to individuals and households to respond to the disaster-related housing needs of individuals and households who are displaced from their predisaster primary residences or whose predisaster primary residences are rendered uninhabitable as a result of damage caused by a major disaster.

"(2) DETERMINATION OF APPROPRIATE TYPES OF ASSISTANCE.—

"(A) IN GENERAL.—The President shall determine appropriate types of housing assistance to be provided under this section to individuals and households described in subsection (a)(1) based on considerations of cost effectiveness, convenience to the individuals and households, and such other factors as the President may consider appropriate. President.

"(B) MULTIPLE TYPES OF ASSISTANCE.—One or more types of housing assistance may be made available under this section, based on the suitability and availability of the types of assistance, to meet the needs of individuals and households in the particular disaster situation.

"(c) TYPES OF HOUSING ASSISTANCE.—

"(1) TEMPORARY HOUSING.—

"(A) FINANCIAL ASSISTANCE.—

"(i) IN GENERAL.—The President may provide financial assistance to individuals or households to rent alternate housing accommodations, existing rental units, manufactured housing, recreational vehicles, or other readily fabricated dwellings.

"(ii) AMOUNT.—The amount of assistance under clause (i) shall be based on the fair market rent for the accommodation provided plus the cost of any transportation, utility hookups, or unit installation not provided directly by the President.

"(B) DIRECT ASSISTANCE.—

"(i) IN GENERAL.—The President may provide temporary housing units, acquired by purchase or lease, directly to individuals or households who, because of a lack of available housing resources, would be unable

to make use of the assistance provided under subparagraph (A).

"(ii) PERIOD OF ASSISTANCE.—The President may not provide direct assistance under clause (i) with respect to a major disaster after the end of the 18-month period beginning on the date of the declaration of the major disaster by the President, except that the President may extend that period if the President determines that due to extraordinary circumstances an extension would be in the public interest.

"(iii) COLLECTION OF RENTAL CHARGES.—After the end of the 18-month period referred to in clause (ii), the President may charge fair market rent for each temporary housing unit provided.

"(2) REPAIRS.—

"(A) IN GENERAL.—The President may provide financial assistance for—

"(i) the repair of owner-occupied private residences, utilities, and residential infrastructure (such as a private access route) damaged by a major disaster to a safe and sanitary living or functioning condition; and

"(ii) eligible hazard mitigation measures that reduce the likelihood of future damage to such residences, utilities, or infrastructure.

"(B) RELATIONSHIP TO OTHER ASSISTANCE.—A recipient of assistance provided under this paragraph shall not be required to show that the assistance can be met through other means, except insurance proceeds.

"(C) MAXIMUM AMOUNT OF ASSISTANCE.—The amount of assistance provided to a household under this paragraph shall not exceed $5,000, as adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

"(3) REPLACEMENT.—

"(A) IN GENERAL.—The President may provide financial assistance for the replacement of owner-occupied private residences damaged by a major disaster.

"(B) MAXIMUM AMOUNT OF ASSISTANCE.—The amount of assistance provided to a household under this paragraph shall not exceed $10,000, as adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

"(C) APPLICABILITY OF FLOOD INSURANCE REQUIREMENT.—With respect to assistance provided under this paragraph, the President may not waive any provision of Federal law requiring the purchase of flood insurance as a condition of the receipt of Federal disaster assistance.

"(4) PERMANENT HOUSING CONSTRUCTION.—The President may 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 in cases in which—

"(A) no alternative housing resources are available; and

"(B) the types of temporary housing assistance described in paragraph (1) are unavailable, infeasible, or not cost-effective.

"(d) TERMS AND CONDITIONS RELATING TO HOUSING ASSISTANCE.—

"(1) SITES.—

"(A) IN GENERAL.—Any readily fabricated dwelling provided under this section shall, whenever practicable, be located on a site that—

"(i) is complete with utilities; and

"(ii) is provided by the State or local government, by the owner of the site, or by the occupant who was displaced by the major disaster.

"(B) SITES PROVIDED BY THE PRESIDENT.—A readily fabricated dwelling may be located on a site provided by the President if the President determines that such a site would be more economical or accessible.

"(2) DISPOSAL OF UNITS.—

"(A) SALE TO OCCUPANTS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims may be sold directly to the individual or household who is occupying the unit if the individual or household lacks permanent housing.

"(ii) SALE PRICE.—A sale of a temporary housing unit under clause (i) shall be at a price that is fair and equitable.

"(iii) DEPOSIT OF PROCEEDS.—Notwithstanding any other provision of law, the proceeds of a sale under clause (i) shall be deposited in the appropriate Disaster Relief Fund account.

"(iv) HAZARD AND FLOOD INSURANCE.—A sale of a temporary housing unit under clause (i) shall be made on the condition that the individual or household purchasing the housing unit agrees to obtain and maintain hazard and flood insurance on the housing unit.

"(v) USE OF GSA SERVICES.—The President may use the services of the General Services Administration to accomplish a sale under clause (i).

"(B) OTHER METHODS OF DISPOSAL.—If not disposed of under subparagraph (A), a temporary housing unit purchased under this section by the President for the purpose of housing disaster victims—

"(i) may be sold to any person; or

"(ii) may be sold, transferred, donated, or otherwise made 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 if, as a condition of the sale, transfer, or donation, the State, other governmental agency, or voluntary organization agrees—

"(I) to comply with the nondiscrimination provisions of section 308; and

"(II) to obtain and maintain hazard and flood insurance on the housing unit.

"(e) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—

"(1) MEDICAL, DENTAL, AND FUNERAL EXPENSES.—The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household in the State who is adversely affected by a major disaster to meet disaster-related medical, dental, and funeral expenses.

"(2) PERSONAL PROPERTY, TRANSPORTATION, AND OTHER EXPENSES.—The President, in consultation with the Governor of a State, may provide financial assistance under this section to an individual or household described in paragraph (1) to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster.

"(f) STATE ROLE.—

"(1) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—

"(A) GRANT TO STATE.—Subject to subsection (g), a Governor may request a grant from the President to provide financial assistance to individuals and households in the State under subsection (e).

"(B) ADMINISTRATIVE COSTS.—A State that receives a grant under subparagraph (A) may expend not more than 5 percent of the amount of the grant for the administrative costs of providing financial assistance to individuals and households in the State under subsection (e).

"(2) ACCESS TO RECORDS.—In providing assistance to individuals and households under this section, the President shall provide for the substantial and ongoing involvement of the States in which the individuals and households are located, including by providing to the States access to the electronic records of individuals and households receiving assistance under this section in order for the States to make available any additional State and local assistance to the individuals and households.

"(g) COST SHARING.—

"(1) FEDERAL SHARE.—Except as provided in paragraph (2), the Federal share of the costs eligible to be paid using assistance provided under this section shall be 100 percent.

"(2) FINANCIAL ASSISTANCE TO ADDRESS OTHER NEEDS.—In the case of financial assistance provided under subsection (e)—

"(A) the Federal share shall be 75 percent; and

"(B) the non-Federal share shall be paid from funds made available by the State.

"(h) MAXIMUM AMOUNT OF ASSISTANCE.—

"(1) IN GENERAL.—No individual or household shall receive financial assistance greater than $25,000 under this section with respect to a single major disaster.

"(2) ADJUSTMENT OF LIMIT.—The limit established under paragraph (1) shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

President.

"(i) RULES AND REGULATIONS.—The President shall prescribe rules and regulations to carry out this section, including criteria, standards, and procedures for determining eligibility for assistance.".

(b) CONFORMING AMENDMENT.—Section 502(a)(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5192(a)(6)) is amended by striking "temporary housing".

(c) ELIMINATION OF INDIVIDUAL AND FAMILY GRANT PROGRAMS.—Section 411 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5178) is repealed.

(d) EFFECTIVE DATE.—The amendments made by this section take effect 18 months after the date of the enactment of this Act.

42 USC 5174 note.

SEC. 207. COMMUNITY DISASTER LOANS.

Section 417 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5184) is amended—

(1) by striking "(a) The President" and inserting the following:

"(a) IN GENERAL.—The President";

(2) by striking "The amount" and inserting the following: "(b) AMOUNT.—The amount";

(3) by striking "Repayment" and inserting the following: "(c) REPAYMENT.—

"(1) CANCELLATION.—Repayment";

(4) by striking "(b) Any loans" and inserting the following: "(d) EFFECT ON OTHER ASSISTANCE.—Any loans";

(5) in subsection (b) (as designated by paragraph (2))—

(A) by striking "and shall" and inserting "shall"; and

(B) by inserting before the period at the end the following: ", and shall not exceed $5,000,000"; and

(6) in subsection (c) (as designated by paragraph (3)), by adding at the end the following:

"(2) CONDITION ON CONTINUING ELIGIBILITY.—A local government shall not be eligible for further assistance under this section during any period in which the local government is in arrears with respect to a required repayment of a loan under this section.".

SEC. 208. REPORT ON STATE MANAGEMENT OF SMALL DISASTERS INITIATIVE.

42 USC 5121 note.

Not later than 3 years after the date of the enactment of this Act, the President shall submit to Congress a report describing the results of the State Management of Small Disasters Initiative, including—

Deadline.

(1) identification of any administrative or financial benefits of the initiative; and

(2) recommendations concerning the conditions, if any, under which States should be allowed the option to administer parts of the assistance program under section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172).

SEC. 209. STUDY REGARDING COST REDUCTION.

42 USC 5121 note.

Not later than 3 years after the date of the enactment of this Act, the Director of the Congressional Budget Office shall complete a study estimating the reduction in Federal disaster assistance that has resulted and is likely to result from the enactment of this Act.

Deadline.

TITLE III—MISCELLANEOUS

SEC. 301. TECHNICAL CORRECTION OF SHORT TITLE.

The first section of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 note) is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Robert T. Stafford Disaster Relief and Emergency Assistance Act'.".

SEC. 302. DEFINITIONS.

Section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122) is amended—

(1) in each of paragraphs (3) and (4), by striking "the Northern" and all that follows through "Pacific Islands" and inserting "and the Commonwealth of the Northern Mariana Islands";

(2) by striking paragraph (6) and inserting the following:

"(6) LOCAL GOVERNMENT.—The term 'local government' means—

"(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

"(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

"(C) a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State."; and

(3) in paragraph (9), by inserting "irrigation," after "utility,".

SEC. 303. FIRE MANAGEMENT ASSISTANCE.

(a) IN GENERAL.—Section 420 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5187) is amended to read as follows:

"SEC. 420. FIRE MANAGEMENT ASSISTANCE.

"(a) IN GENERAL.—The President is authorized to provide assistance, including grants, equipment, supplies, and personnel, to any State or local government for the mitigation, management, and control of any fire on public or private forest land or grassland that threatens such destruction as would constitute a major disaster.

President.

"(b) COORDINATION WITH STATE AND TRIBAL DEPARTMENTS OF FORESTRY.—In providing assistance under this section, the President shall coordinate with State and tribal departments of forestry.

"(c) ESSENTIAL ASSISTANCE.—In providing assistance under this section, the President may use the authority provided under section 403.

"(d) RULES AND REGULATIONS.—The President shall prescribe such rules and regulations as are necessary to carry out this section.". President.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect 1 year after the date of the enactment of this Act. 42 USC 5187 note.

SEC. 304. DISASTER GRANT CLOSEOUT PROCEDURES. 42 USC 5205.

Title VII of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5101 et seq.) is amended by adding at the end the following:

"SEC. 705. DISASTER GRANT CLOSEOUT PROCEDURES.

"(a) STATUTE OF LIMITATIONS.—

"(1) IN GENERAL.—Except as provided in paragraph (2), no administrative action to recover any payment made to a State or local government for disaster or emergency assistance under this Act shall be initiated in any forum after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency.

"(2) FRAUD EXCEPTION.—The limitation under paragraph (1) shall apply unless there is evidence of civil or criminal fraud.

"(b) REBUTTAL OF PRESUMPTION OF RECORD MAINTENANCE.—

"(1) IN GENERAL.—In any dispute arising under this section after the date that is 3 years after the date of transmission of the final expenditure report for the disaster or emergency, there shall be a presumption that accounting records were maintained that adequately identify the source and application of funds provided for financially assisted activities.

"(2) AFFIRMATIVE EVIDENCE.—The presumption described in paragraph (1) may be rebutted only on production of affirmative evidence that the State or local government did not maintain documentation described in that paragraph.

"(3) INABILITY TO PRODUCE DOCUMENTATION.—The inability of the Federal, State, or local government to produce source documentation supporting expenditure reports later than 3 years after the date of transmission of the final expenditure report shall not constitute evidence to rebut the presumption described in paragraph (1).

"(4) RIGHT OF ACCESS.—The period during which the Federal, State, or local government has the right to access source documentation shall not be limited to the required 3-year retention period referred to in paragraph (3), but shall last as long as the records are maintained.

"(c) BINDING NATURE OF GRANT REQUIREMENTS.—A State or local government shall not be liable for reimbursement or any other penalty for any payment made under this Act if—

"(1) the payment was authorized by an approved agreement specifying the costs;

"(2) the costs were reasonable; and

"(3) the purpose of the grant was accomplished.".

SEC. 305. PUBLIC SAFETY OFFICER BENEFITS FOR CERTAIN FEDERAL AND STATE EMPLOYEES.

(a) IN GENERAL.—Section 1204 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796b) is amended by striking paragraph (7) and inserting the following:

"(7) 'public safety officer' means—

"(A) an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as a firefighter, or as a member of a rescue squad or ambulance crew;

"(B) an employee of the Federal Emergency Management Agency who is performing official duties of the Agency in an area, if those official duties—

"(i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

"(ii) are determined by the Director of the Federal Emergency Management Agency to be hazardous duties; or

"(C) an employee of a State, local, or tribal emergency management or civil defense agency who is performing official duties in cooperation with the Federal Emergency Management Agency in an area, if those official duties—

"(i) are related to a major disaster or emergency that has been, or is later, declared to exist with respect to the area under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.); and

"(ii) are determined by the head of the agency to be hazardous duties.".

42 USC 3796b note.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies only to employees described in subparagraphs (B) and (C) of section 1204(7) of the Omnibus Crime Control and Safe Streets Act of 1968 (as amended by subsection (a)) who are injured or who die in the line of duty on or after the date of the enactment of this Act.

42 USC 5206.

SEC. 306. BUY AMERICAN.

(a) COMPLIANCE WITH BUY AMERICAN ACT.—No funds authorized to be appropriated under this Act or any amendment made by this Act may be expended by an entity unless the entity, in expending the funds, complies with the Buy American Act (41 U.S.C. 10a et seq.).

(b) DEBARMENT OF PERSONS CONVICTED OF FRAUDULENT USE OF "MADE IN AMERICA" LABELS.—

Deadline.

(1) IN GENERAL.—If the Director of the Federal Emergency Management Agency determines that a person has been convicted of intentionally affixing a label bearing a "Made in America" inscription to any product sold in or shipped to the United States that is not made in America, the Director shall determine, not later than 90 days after determining that the person has been so convicted, whether the person should be debarred from contracting under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) DEFINITION OF DEBAR.—In this subsection, the term "debar" has the meaning given the term in section 2393(c) of title 10, United States Code.

SEC. 307. TREATMENT OF CERTAIN REAL PROPERTY.

(a) IN GENERAL.—Notwithstanding the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.), the Flood Disaster

Protection Act of 1973 (42 U.S.C. 4002 et seq.), or any other provision of law, or any flood risk zone identified, delineated, or established under any such law (by flood insurance rate map or otherwise), the real property described in subsection (b) shall not be considered to be, or to have been, located in any area having special flood hazards (including any floodway or floodplain).

(b) REAL PROPERTY.—The real property described in this subsection is all land and improvements on the land located in the Maple Terrace Subdivisions in the City of Sycamore, DeKalb County, Illinois, including—

(1) Maple Terrace Phase I;
(2) Maple Terrace Phase II;
(3) Maple Terrace Phase III Unit 1;
(4) Maple Terrace Phase III Unit 2;
(5) Maple Terrace Phase III Unit 3;
(6) Maple Terrace Phase IV Unit 1;
(7) Maple Terrace Phase IV Unit 2; and
(8) Maple Terrace Phase IV Unit 3.

(c) REVISION OF FLOOD INSURANCE RATE LOT MAPS.—As soon as practicable after the date of the enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the appropriate flood insurance rate lot maps of the agency to reflect the treatment under subsection (a) of the real property described in subsection (b).

SEC. 308. STUDY OF PARTICIPATION BY INDIAN TRIBES IN EMERGENCY MANAGEMENT.

42 USC 5121 note.

(a) DEFINITION OF INDIAN TRIBE.—In this section, the term "Indian tribe" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(b) STUDY.—

(1) IN GENERAL.—The Director of the Federal Emergency Management Agency shall conduct a study of participation by Indian tribes in emergency management.

(2) REQUIRED ELEMENTS.—The study shall—

(A) survey participation by Indian tribes in training, predisaster and postdisaster mitigation, disaster preparedness, and disaster recovery programs at the Federal and State levels; and

(B) review and assess the capacity of Indian tribes to participate in cost-shared emergency management programs and to participate in the management of the programs.

(3) CONSULTATION.—In conducting the study, the Director shall consult with Indian tribes.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director shall submit a report on the study under subsection (b) to—

Deadline.

(1) the Committee on Environment and Public Works of the Senate;

(2) the Committee on Transportation and Infrastructure of the House of Representatives;

(3) the Committee on Appropriations of the Senate; and

(4) the Committee on Appropriations of the House of Representatives.

Approved October 30, 2000.

LEGISLATIVE HISTORY—H.R. 707 (S. 1691):

HOUSE REPORTS: No. 106–40 (Comm. on Transportation and Infrastructure).
SENATE REPORTS: No. 106–295 accompanying S. 1691 (Comm. on Environment and Public Works).
CONGRESSIONAL RECORD:
Vol. 145 (1999): Mar. 4, considered and passed House.
Vol. 146 (2000): July 19, considered and passed Senate, amended.
Oct. 3, House concurred in Senate amendment with an amendment.
Oct. 5, Senate concurred in House amendment with an amendment.
Oct. 10, House concurred in Senate amendment.

○

Federal Register

Tuesday,
February 26, 2002

Part III

Federal Emergency Management Agency

44 CFR Parts 201 and 206

Hazard Mitigation Planning and Hazard Mitigation Grant Program; Interim Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 201 and 206

RIN 3067–AD22

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim final rule.

SUMMARY: This rule addresses State mitigation planning, identifies new local mitigation planning requirements, authorizes Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. This rule also requires that repairs or construction funded by a disaster loan or grant must be carried out in accordance with applicable standards and says that FEMA may require safe land use and construction practices as a condition of grantees receiving disaster assistance under the Stafford Act.

DATES: *Effective Date:* February 26, 2002.

Comment Date: We will accept written comments through April 29, 2002.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Margaret E. Lawless, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472, 202–646–3027, (facsimile) 202–646–3104, or (email) *margaret.lawless@fema.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Throughout the preamble and the rule the terms ''we'', ''our'' and ''us'' refer to FEMA.

Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under § 104 the Disaster Mitigation Act of 2000, (DMA 2000) P.L. 106–390, provides new and revitalized approaches to mitigation planning. This section: (1) Continues the requirement for a Standard State Mitigation plan as a condition of disaster assistance; (2) provides for States to receive an increased percentage of HMGP funds (from 15 to 20 percent of the total estimated eligible Federal assistance) if, at the time of the declaration of a major disaster, they have in effect a FEMA-approved Enhanced State Mitigation Plan that meets the factors listed in this rule; (3) establishes a new requirement for local mitigation plans; and (4) authorizes up to 7 percent of the HMGP funds available to a State to be used for development of State, tribal, and local mitigation plans. We will give Indian tribal governments the opportunity to fulfill the requirements of § 322 either as a grantee or a subgrantee. An Indian tribal government may choose to apply for HMGP funding directly to us and would then serve as a grantee, meeting the State level responsibilities, or it may apply through the State, meeting the local government or subgrantee responsibilities.

Section 322, in concert with other sections of the Act, provides a significant opportunity to reduce the Nation's disaster losses through mitigation planning. In addition, implementation of planned, pre-identified, cost-effective mitigation measures will streamline the disaster recovery process. The Act provides a framework for linking pre- and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. The language in the Act, taken as a whole, emphasizes the importance of strong State and local planning processes and comprehensive program management at the State level. The new planning criteria also support State administration of the HMGP, and contemplate a significant State commitment to mitigation activities, comprehensive State mitigation planning, and strong program management.

The planning process also provides a link between State and local mitigation programs. Both State level and local plans should address strategies for incorporating post-disaster early mitigation implementation strategies and sustainable recovery actions. We also recognize that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference hazardous materials and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as to expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster.

Section 409 of the Stafford Act, 42 U.S.C. 5176, which required mitigation plans and the use of minimum codes and standards, was repealed by the DMA 2000. These issues are now addressed in two separate sections of the law: mitigation planning is in section 322 of the Act, and minimum codes and standards are in section 323 of the Act. We previously implemented section 409 through 44 CFR Part 206, Subpart M. Since current law now distinguishes the planning from the codes and standards in separate sections, we will address them in different sections of the CFR. We address the new planning regulations in Part 201 to reflect the broader relevance of planning to all FEMA mitigation programs, while the minimum standards remain in Part 206, Federal Disaster Assistance, Subpart M. The regulations implementing the Hazard Mitigation Grant Program are in Part 206, Subpart N. This rule also contains changes to Subpart N, to reflect the new planning criteria identified in section 322 of the Act.

The administration is considering changes to FEMA's mitigation programs in the President's Budget for FY 2003. However, States and localities still would be required to have plans in effect, which meet the minimum requirements under this rule, as a condition of receiving mitigation assistance after November 1, 2003.

Implementation Strategy. States must have an approved hazard mitigation plan in order to receive Stafford Act assistance, excluding assistance provided pursuant to emergency provisions. These regulations provide criteria for the new two-tiered State mitigation plan process: Standard State Mitigation Plans, which allow a State to receive HMGP funding based on 15 percent of the total estimated eligible Stafford Act disaster assistance, and Enhanced State Mitigation Plans, which allow a State to receive HMGP funds based on 20 percent of the total estimated eligible Stafford Act disaster assistance. Enhanced State Mitigation Plans must demonstrate that the State has developed a comprehensive mitigation program, that it effectively uses available mitigation funding, and that it is capable of managing the increased funding. All State Mitigations Plans must be reviewed, revised, and re-approved by FEMA every three years. An important requirement of the legislation is that we must approve a completed enhanced plan *before* a disaster declaration, in order for the State to be eligible for the increased funding.

We will no longer require States to revise their mitigation plan after every disaster declaration, as under former

section 409 of the Act, 42 U.S.C. 5176. We recommend, however, that States consider revising their plan if a disaster or other circumstances significantly affect its mitigation priorities. States with existing mitigation plans, approved under former section 409, will continue to be eligible for the 15 percent HMGP funding until November 1, 2003, when all State mitigation plans must meet the requirements of these regulations. If State plans are not revised and approved to meet the Standard State Mitigation Plan requirements by that time, they will be ineligible for Stafford Act assistance, excluding emergency assistance.

Indian tribal governments may choose to apply directly to us for HMGP funding, and would therefore be responsible for having an approved State level mitigation plan, and would act as the grantee. If an Indian tribal government chooses to apply for HMGP grants through the State, they would be responsible for having an approved local level mitigation plan, and would serve as a subgrantee accountable to the State as grantee.

This rule also establishes local planning criteria so that these jurisdictions can actively begin the hazard mitigation planning process. This requirement is to encourage the development of comprehensive mitigation plans before disaster events. Section 322 requires local governments to have an approved local mitigation plan to be eligible to receive an HMGP project grant; however, this requirement will not fully take effect until November 1, 2003. FEMA Regional Directors may grant an exception to this requirement in extenuating circumstances. Until November 1, 2003, local governments will be able to receive HMGP project grant funds and may prepare a mitigation plan concurrently with implementation of their project grant. We anticipate that the Predisaster Mitigation program authorized by section 203 of the Act, 42 U.S.C. 5133, will also support this local mitigation planning by making funds available for the development of comprehensive local mitigation plans. Managing States that we approve under new criteria established under section 404 of the Act, 42 U.S.C. 5170c(c), as amended by section 204 of DMA 2000 will have approval authority for local mitigation plans. This provision does not apply to States that we approved under the Managing State program in effect before enactment of DMA 2000.

Our goal is for State and local governments to develop comprehensive and integrated plans that are coordinated through appropriate State, local, and regional agencies, as well as non-governmental interest groups. To the extent feasible and practicable, we would also like to consolidate the planning requirements for different FEMA mitigation programs. This will ensure that one local plan will meet the minimum requirements for all of the different FEMA mitigation programs, such as the Flood Mitigation Assistance Program (authorized by sections 553 and 554 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4104c and 42 U.S.C. 4104d), the Community Rating System (authorized by section 541 of the National Flood Insurance Reform Act of 1994, 42 U.S.C. 4022), the Pre-Disaster Mitigation Program (authorized by section 203 of the Stafford Act), the Hazard Mitigation Grant Program (authorized by section 404 of the Stafford Act), and the mitigation activities that are based upon the provisions of section 323 and subsections 406(b) and (e) of the Stafford Act. The mitigation plans may also serve to integrate documents and plans produced under other emergency management programs. State level plans should identify overall goals and priorities, incorporating the more specific local risk assessments, when available, and including projects identified through the local planning process.

Under section 322(d), up to 7 percent of the available HMGP funds may now be used for planning, and we encourage States to use these funds for local plan development. In a memorandum to FEMA Regional Directors dated December 21, 2000, we announced that this provision of section 322 was effective for disasters declared on or after October 30, 2000, the date on which the Disaster Mitigation Act of 2000 became law. Regional Directors are encouraging States to make these funds immediately available to local and Indian tribal governments, although the funds can be used for plan development and review at the State level as well.

As discussed earlier in this Supplementary Information, subsection 323(a) of the Stafford Act, 42 U.S.C. 5166(a), requires as a precondition to receiving disaster assistance under the Act that State and local governments, as well as eligible private nonprofit entities, must agree to carry out repair and reconstruction activities ''in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards.'' In addition, that subsection authorizes the President (FEMA, by virtue of Executive Order 12148, as amended) to ''require safe land use and construction practices, after adequate consultation with appropriate State and local officials'' in the course of the use of Federal disaster assistance by eligible applicants to repair and restore disaster-damaged facilities.

At the same time that we implement the planning mandates of section 322 of the Stafford Act, we are also implementing the Minimum Standards for Public and Private Structures provision of section 323 of the Act. This rule appears at Subpart M of Part 206 of Title 44 of the Code of Federal Regulations. As mentioned earlier, the section 322 planning regulations are in Part 201, while Part 206, Subpart M includes only the minimum codes and standards regulations mandated in § 323. The rule to implement § 323 of the Act reinforces the link between pre-disaster planning, building and construction standards, and post-disaster reconstruction efforts.

We encourage comments on this interim final rule, and we will make every effort to involve all interested parties prior to the development of the Final Rule.

Justification for Interim Final Rule

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest. Section 322 of the Stafford Act allows States to receive increased post-disaster grant funding for projects designed to reduce future disaster losses. States will only be eligible for these increased funds if they have a FEMA-approved Enhanced State Mitigation Plan.

This interim final rule provides the criteria for development and approval of these plans, as well as criteria for local mitigation plans required by this legislation. In order for State and local governments to be positioned to receive these mitigation funds as soon as possible, these regulations must be in effect. The public benefit of this rule will be to assist States and communities assess their risks and identify activities to strengthen the larger community and the built environment in order to become less susceptible to disasters. Planning serves as the vital foundation to saving lives and protecting properties, having integrated plans in place can serve to both streamline recovery efforts and lessen potential future damages. Therefore, we believe it is contrary to the public interest to delay

the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States and communities by identifying criteria for mitigation plans in order to reduce risks nationwide, establish criteria for minimum codes and standards in post-disaster reconstruction, and to allow States to adjust their mitigation plans to receive the increase in mitigation funding.

In addition, we believe that, under the circumstances, delaying the effective date of this rule until after the comment period would not further the public interest. Prior to this rulemaking, FEMA hosted a meeting where interested parties provided comments and suggestions on how we could implement these planning requirements. Participants in this meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors' Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. We took comments and suggestions provided at this meeting into account in developing this interim final rule. Therefore, we find that prior notice and comment on this rule would not further the public interest. We actively encourage and solicit comments on this interim final rule from interested parties, and we will consider them in preparing the final rule. For these reasons, we believe we have good cause to publish an interim final rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The purpose of this rule is to implement section 322 of the Stafford Act which addresses mitigation planning at the State, tribal, and local levels, identifies new local planning requirements, allows Hazard Mitigation Grant Program (HMGP) funds for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan. The rule identifies local mitigation planning requirements before approval of project grants, and requires our approval of an Enhanced State Mitigation plan as a condition for increased mitigation funding. The rule also implements section 323 of the Stafford Act, which requires that repairs or construction funded by disaster loans or grants must comply with applicable standards and safe land use and construction practices. As such the rule itself will not have an effect on the economy of more than $100,000,000.

Therefore, this rule is a significant regulatory action and is not an economically significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, we incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that we can anticipate under the final rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. Section 322 focuses specifically on mitigation planning to: Identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and tribal areas; support development of local mitigation plans; provide for technical assistance to local and tribal governments for mitigation planning; and identify and prioritize mitigation actions that the State will support, as resources become available. Section 323 requires compliance with applicable codes and standards in repair and construction, and use of safe land use and construction standards. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and concurrent with the publication of this interim final rule, we have submitted a request for review and approval of a new collection of information, which is contained in this interim final rule. Under the Paperwork Reduction Act of 1995, a person may not be penalized for failing to comply with an information collection that does not display a currently valid Office of Management and Budget (OMB) control number. The request was submitted to OMB for approval under the emergency processing procedures in OMB regulation 5 CFR 1320.1. OMB has approved this collection of information for use through August 31, 2002, under OMB Number 3067–0297.

We expect to follow this emergency request with a request for OMB approval to continue the use of the collection of information for a term of three years. The request will be processed under OMB's normal clearance procedures in accordance with provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, we invite the general public to comment on the collection of information. This notice and request for comments complies with the provisions of the Paperwork

Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans under Section 322 of the Disaster Mitigation Act of 2000.

Abstract: Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistant Act, as amended by Section 104 of the Disaster Mitigation Act of 2000, provides new and revitalized approaches to mitigation planning. To obtain Federal assistance, new planning provisions require that each state, local, and tribal government prepare a hazard mitigation plan to include sections that describe the planning process, an assessment of the risks, a mitigation strategy, and identification of the plan maintenance and updating process. The Act provides a framework for linking pre- and post-disaster mitigation planning and initiatives with public and private interests to ensure an integrated, comprehensive approach to disaster loss reduction. Under Section 322 there is a two-tiered State mitigation plan process. State mitigation plans must be reviewed, revised, and submitted to us every 3 years.

(1) A *Standard State Mitigation Plan* must be approved by us in order for States to be eligible to receive Hazard Mitigation Grant Program (HGMP) funding based on 15 percent of the total estimated eligible Federal disaster assistance. This plan demonstrates the State's goals, priorities, and commitment to reduce risks from natural hazards and serves as a guide for State and local decision makers as they commit resources to reducing the effects of natural hazards.

(2) An *Enhanced State Mitigation Plan* must be approved by us for a State to be eligible to receive HMGP funds based on 20 percent of the total estimated eligible Federal disaster assistance. This plan must be approved by us within the 3 years prior to the current major disaster declaration. It must demonstrate that a State has developed a comprehensive mitigation program, is effectively using available mitigation funding, and is capable of managing the increased funding.

To be eligible to receive HMGP project grants, *local governments* must develop Local Mitigation Plans that include a risk assessment and mitigation strategy to reduce potential losses and target resources. Plans must be reviewed, revised, and submitted to us for approval every 5 years.

To receive HMGP project grants, *tribal governments* may apply as a grantee or subgrantee, and will be required to meet the planning requirements of a State or local government.

Estimated Total Annual Burden:

Type of collection/forms	No. of respondents	Hours per response	Annual burden hours
Update state or tribal mitigation plans (standard state mitigation plans)	18	320	5,760
State review of local plans	500 local plans	8	4,000
States develop Enhanced State Mitigation Plans	7	100	700
Local or tribal governments develop mitigation plans	500 local plans	300	150,000
Total burden			160,460

Comments: We are soliciting written comments to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) obtain recommendations to enhance the quality, utility, and clarity of the information to be collected; and (d) evaluate the extent to which automated, electronic, mechanical, or other technological collection techniques may further reduce the respondents' burden. FEMA will accept comments through April 29, 2002.

Addressee: Interested persons should submit written comments 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, Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the OMB paperwork clearance package by contacting Ms. Anderson at (202) 646–2625 (voice), (202) 646–3347 (facsimile), or by e-mail at *muriel.anderson@fema.gov.*

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O.13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

However, we have consulted with State and local officials. In order to assist us in the development of this rule, we hosted a meeting to allow interested parties an opportunity to provide their perspectives on the legislation and options for implementation of § 322. Stakeholders who attended the meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors' Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. We received valuable input from all parties at the meeting, which we took into account in the development of this rule. Additionally, we actively encourage and solicit comments on this interim final rule from interested parties, and we will

consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

We have reviewed this interim final rule under Executive Order 13175, which became effective on February 6, 2001. Under the Hazard Mitigation Grant Program (HMGP), Indian tribal governments will have the option to apply for grants directly to us and to serve as ''grantee'', carrying out ''State'' roles. If they choose this option, tribal governments may submit either a State-level Standard Mitigation Plan for the 15 percent HMGP funding or a State-level Enhanced Mitigation Plan for 20 percent HMGP funding. In either case, Indian tribal governments would be able to spend up to 7 percent of those funds on planning. Before developing this rule, we met with representatives from State and local governments and the Bureau of Indian Affairs, to discuss the new planning opportunities and requirements of § 322 of the Stafford Act. We received valuable input from all parties, which helped us to develop this interim final rule.

In reviewing the interim final rule, we find that it does not have ''tribal implications'' as defined in Executive Order 13175 because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Moreover, the interim final rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

Congressional Review of Agency Rulemaking

We have sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is a not ''major rule'' within the meaning of that Act. It is an administrative action in support of normal day-to-day mitigation planning activities required by section 322 and compliance under section 323 of the Stafford Act, as enacted in DMA 2000.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act, and OMB has assigned Control No. 3067–0297. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 201 and Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and recordkeeping requirements.

Accordingly, Amend 44 CFR, Subchapter D—Disaster Assistance, as follows:

1. Add Part 201 to read as follows:

PART 201—MITIGATION PLANNING

Sec.
201.1 Purpose.
201.2 Definitions.
201.3 Responsibilities.
201.4 Standard State Mitigation Plans.
201.5 Enhanced State Mitigation Plans.
201.6 Local Mitigation Plans.

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

§ 201.1 Purpose.

(a) The purpose of this part is to provide information on the polices and procedures for mitigation planning as required by the provisions of section 322 of the Stafford Act, 42 U.S.C. 5165.

(b) The purpose of mitigation planning is for State, local, and Indian tribal governments to identify the natural hazards that impact them, to identify actions and activities to reduce any losses from those hazards, and to establish a coordinated process to implement the plan, taking advantage of a wide range of resources.

§ 201.2 Definitions.

Grantee means the government to which a grant is awarded, which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, after a declaration, an Indian tribal government may choose to be a grantee, or may act as a subgrantee under the State. An Indian tribal government acting as grantee will assume the responsibilities of a ''state'', as described in this part, for the purposes of administering the grant.

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

Hazard Mitigation Grant Program means the program authorized under section 404 of the Stafford Act, 42 U.S.C 5170c and implemented at 44 CFR Part 206, Subpart N, which authorizes funding for certain mitigation measures identified through the evaluation of natural hazards conducted under section 322 of the Stafford Act 42 U.S.C 5165.

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

Local government is any county, municipality, city, town, township, public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government; any Indian tribe or authorized tribal organization, or Alaska Native village or organization; and any rural community, unincorporated town or village, or other public entity.

Managing State means a State to which FEMA has delegated the authority to administer and manage the HMGP under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c). FEMA may also delegate authority to tribal governments to administer and manage the HMGP as a Managing State.

Regional Director is a director of a regional office of FEMA, or his/her designated representative.

Small and impoverished communities means a community of 3,000 or fewer individuals that is identified by the State as a rural community, and is not a remote area within the corporate boundaries of a larger city; is economically disadvantaged, by having an average per capita annual income of residents not exceeding 80 percent of national, per capita income, based on

best available data; the local unemployment rate exceeds by one percentage point or more, the most recently reported, average yearly national unemployment rate; and any other factors identified in the State Plan in which the community is located.

The Stafford Act refers to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93–288, as amended (42 U.S.C. 5121–5206).

State is any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

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

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organizations, or Indian tribal government. Indian tribal governments acting as a subgrantee are accountable to the State grantee.

§ 201.3 Responsibilities.

(a) *General.* This section identifies the key responsibilities of FEMA, States, and local/tribal governments in carrying out section 322 of the Stafford Act, 42 U.S.C. 5165.

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

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

(2) Provide technical assistance and training to State, local, and Indian tribal governments regarding the mitigation planning process;

(3) Review and approve all Standard and Enhanced State Mitigation Plans;

(4) Review and approve all local mitigation plans, unless that authority has been delegated to the State in accordance with § 201.6(d);

(5) Conduct reviews, at least once every three years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

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

(1) Prepare and submit to FEMA a Standard State Mitigation Plan following the criteria established in § 201.4 as a condition of receiving Stafford Act assistance (except emergency assistance).

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every three years from the date of the approval of the previous plan.

(3) At a minimum, review and, if necessary, update the Standard State Mitigation Plan by November 1, 2003 and every three years from the date of the approval of the previous plan in order to continue program eligibility.

(4) Make available the use of up to the 7 percent of HMGP funding for planning in accordance with § 206.434.

(5) Provide technical assistance and training to local governments to assist them in applying for HMGP planning grants, and in developing local mitigation plans.

(6) For Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c), review and approve local mitigation plans in accordance with § 201.6(d).

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

(1) Prepare and adopt a jurisdiction-wide natural hazard mitigation plan as a condition of receiving project grant funds under the HMGP, in accordance with § 201.6.

(2) At a minimum, review and, if necessary, update the local mitigation plan every five years from date of plan approval to continue program eligibility.

(e) *Indian tribal governments.* Indian tribal governments will be given the option of applying directly to us for Hazard Mitigation Grant Program funding, or they may choose to apply through the State. If they apply directly to us, they will assume the responsibilities of the State, or grantee, and if they apply through the State, they will assume the responsibilities of the local government, or subgrantee.

§ 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* By November 1, 2003, States must have an approved Standard State Mitigation plan meeting the requirements of this section, in order to receive assistance under the Stafford Act, although assistance authorized under disasters declared prior to November 1, 2003 will continue to be made available. In any case, emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. States may choose to include the requirements of the HMGP Administrative Plan in their mitigation plan.

(b) *Planning process.* An effective planning process is essential in developing and maintaining a good plan. The mitigation planning process should include coordination with other State agencies, appropriate Federal agencies, interested groups, and be integrated to the extent possible with other ongoing State planning efforts as well as other FEMA mitigation programs and initiatives.

(c) *Plan content.* To be effective the plan must include the following elements:

(1) Description of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how other agencies participated.

(2) *Risk assessments* that provide the factual basis for activities proposed in the strategy portion of the mitigation plan. Statewide risk assessments must characterize and analyze natural hazards and risks to provide a statewide overview. This overview will allow the State to compare potential losses throughout the State and to determine their priorities for implementing mitigation measures under the strategy, and to prioritize jurisdictions for receiving technical and financial support in developing more detailed local risk and vulnerability assessments. The risk assessment shall include the following:

(i) An overview of the type and location of all natural hazards that can affect the State, including information on previous occurrences of hazard events, as well as the probability of future hazard events, using maps where appropriate;

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned critical or operated facilities located in the

identified hazard areas shall also be addressed;

(iii) An overview and analysis of potential losses to the identified vulnerable structures, based on estimates provided in local risk assessments as well as the State risk assessment. The State shall estimate the potential dollar losses to State owned or operated buildings, infrastructure, and critical facilities located in the identified hazard areas.

(3) A *Mitigation Strategy* that provides the State's blueprint for reducing the losses identified in the risk assessment. This section shall include:

(i) A description of State goals to guide the selection of activities to mitigate and reduce potential losses.

(ii) A discussion of the State's pre- and post-disaster hazard management policies, programs, and capabilities to mitigate the hazards in the area, including: an evaluation of State laws, regulations, policies, and programs related to hazard mitigation as well as to development in hazard-prone areas; a discussion of State funding capabilities for hazard mitigation projects; and a general description and analysis of the effectiveness of local mitigation policies, programs, and capabilities.

(iii) An identification, evaluation, and prioritization of cost-effective, environmentally sound, and technically feasible mitigation actions and activities the State is considering and an explanation of how each activity contributes to the overall mitigation strategy. This section should be linked to local plans, where specific local actions and projects are identified.

(iv) Identification of current and potential sources of Federal, State, local, or private funding to implement mitigation activities.

(4) A section on the *Coordination of Local Mitigation Planning* that includes the following:

(i) A description of the State process to support, through funding and technical assistance, the development of local mitigation plans.

(ii) A description of the State process and timeframe by which the local plans will be reviewed, coordinated, and linked to the State Mitigation Plan.

(iii) Criteria for prioritizing communities and local jurisdictions that would receive planning and project grants under available funding programs, which should include consideration for communities with the highest risks, repetitive loss properties, and most intense development pressures. Further, that for non-planning grants, a principal criterion for prioritizing grants shall be the extent to which benefits are maximized according to a cost benefit review of proposed projects and their associated costs.

(5) A *Plan Maintenance Process* that includes:

(i) An established method and schedule for monitoring, evaluating, and updating the plan.

(ii) A system for monitoring implementation of mitigation measures and project closeouts.

(iii) A system for reviewing progress on achieving goals as well as activities and projects identified in the Mitigation Strategy.

(6) A *Plan Adoption Process.* The plan must be formally adopted by the State prior to submittal to us for final review and approval.

(7) *Assurances.* The plan must include assurances that the State will comply with all applicable Federal statutes and regulations in effect with respect to the periods for which it receives grant funding, in compliance with 44 CFR 13.11(c). The State will amend its plan whenever necessary to reflect changes in State or Federal laws and statutes as required in 44 CFR 13.11(d).

(d) *Review and updates.* Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Director every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible. We also encourage a State to review its plan in the post-disaster timeframe to reflect changing priorities, but it is not required.

§ 201.5 Enhanced State Mitigation Plans.

(a) A State with a FEMA approved Enhanced State Mitigation Plan at the time of a disaster declaration is eligible to receive increased funds under the HMGP, based on twenty percent of the total estimated eligible Stafford Act disaster assistance. The Enhanced State Mitigation Plan must demonstrate that a State has developed a comprehensive mitigation program, that the State effectively uses available mitigation funding, and that it is capable of managing the increased funding. In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within three years prior to the disaster declaration.

(b) Enhanced State Mitigation Plans must include all elements of the Standard State Mitigation Plan identified in § 201.4, as well as document the following:

(1) Demonstration that the plan is integrated to the extent practicable with other State and/or regional planning initiatives (comprehensive, growth management, economic development, capital improvement, land development, and/or emergency management plans) and FEMA mitigation programs and initiatives that provide guidance to State and regional agencies.

(2) Documentation of the State's project implementation capability, identifying and demonstrating the ability to implement the plan, including:

(i) Established eligibility criteria for multi-hazard mitigation measures.

(ii) A system to determine the cost effectiveness of mitigation measures, consistent with OMB Circular A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs, and to rank the measures according to the State's eligibility criteria.

(iii) Demonstration that the State has the capability to effectively manage the HMGP as well as other mitigation grant programs, including a record of the following:

(A) Meeting HMGP and other mitigation grant application timeframes and submitting complete, technically feasible, and eligible project applications with appropriate supporting documentation;

(B) Preparing and submitting accurate environmental reviews and benefit-cost analyses;

(C) Submitting complete and accurate quarterly progress and financial reports on time; and

(D) Completing HMGP and other mitigation grant projects within established performance periods, including financial reconciliation.

(iv) A system and strategy by which the State will conduct an assessment of the completed mitigation actions and include a record of the effectiveness (actual cost avoidance) of each mitigation action.

(3) Demonstration that the State effectively uses existing mitigation programs to achieve its mitigation goals.

(4) Demonstration that the State is committed to a comprehensive state mitigation program, which might include any of the following:

(i) A commitment to support local mitigation planning by providing workshops and training, State planning grants, or coordinated capability development of local officials, including Emergency Management and Floodplain Management certifications.

(ii) A statewide program of hazard mitigation through the development of legislative initiatives, mitigation councils, formation of public/private

partnerships, and/or other executive actions that promote hazard mitigation.

(iii) The State provides a portion of the non-Federal match for HMGP and/or other mitigation projects.

(iv) To the extent allowed by State law, the State requires or encourages local governments to use a current version of a nationally applicable model building code or standard that addresses natural hazards as a basis for design and construction of State sponsored mitigation projects.

(v) A comprehensive, multi-year plan to mitigate the risks posed to existing buildings that have been identified as necessary for post-disaster response and recovery operations.

(vi) A comprehensive description of how the State integrates mitigation into its post-disaster recovery operations.

(c) *Review and updates.* (1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Director every three years. The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the three years prior to the current major disaster declaration.

§ 201.6 Local Mitigation Plans.

The local mitigation plan is the representation of the jurisdiction's commitment to reduce risks from natural hazards, serving as a guide for decision makers as they commit resources to reducing the effects of natural hazards. Local plans will also serve as the basis for the State to provide technical assistance and to prioritize project funding.

(a) *Plan requirement.* (1) For disasters declared after November 1, 2003, a local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. Until November 1, 2003, local mitigation plans may be developed concurrent with the implementation of the project grant.

(2) Regional Directors may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(3) Multi-jurisdictional plans (e.g. watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

(b) *Planning process.* An open public involvement process is essential to the development of an effective plan. In order to develop a more comprehensive approach to reducing the effects of natural disasters, the planning process shall include:

(1) An opportunity for the public to comment on the plan during the drafting stage and prior to plan approval;

(2) An opportunity for neighboring communities, local and regional agencies involved in hazard mitigation activities, and agencies that have the authority to regulate development, as well as businesses, academia and other private and non-profit interests to be involved in the planning process; and

(3) Review and incorporation, if appropriate, of existing plans, studies, reports, and technical information.

(c) *Plan content.* The plan shall include the following:

(1) Documentation of the *planning process* used to develop the plan, including how it was prepared, who was involved in the process, and how the public was involved.

(2) A *risk assessment* that provides the factual basis for activities proposed in the strategy to reduce losses from identified hazards. Local risk assessments must provide sufficient information to enable the jurisdiction to identify and prioritize appropriate mitigation actions to reduce losses from identified hazards. The risk assessment shall include:

(i) A description of the type, location, and extent of all natural hazards that can affect the jurisdiction. The plan shall include information on previous occurrences of hazard events and on the probability of future hazard events.

(ii) A description of the jurisdiction's vulnerability to the hazards described in paragraph (c)(2)(i) of this section. This description shall include an overall summary of each hazard and its impact on the community. The plan should describe vulnerability in terms of:

(A) The types and numbers of existing and future buildings, infrastructure, and critical facilities located in the identified hazard areas;

(B) An estimate of the potential dollar losses to vulnerable structures identified in paragraph (c)(2)(i)(A) of this section and a description of the methodology used to prepare the estimate;

(C) Providing a general description of land uses and development trends within the community so that mitigation options can be considered in future land use decisions.

(iii) For multi-jurisdictional plans, the risk assessment section must assess each jurisdiction's risks where they vary from the risks facing the entire planning area.

(3) *A mitigation strategy* that provides the jurisdiction's blueprint for reducing the potential losses identified in the risk assessment, based on existing authorities, policies, programs and resources, and its ability to expand on and improve these existing tools. This section shall include:

(i) A description of mitigation goals to reduce or avoid long-term vulnerabilities to the identified hazards.

(ii) A section that identifies and analyzes a comprehensive range of specific mitigation actions and projects being considered to reduce the effects of each hazard, with particular emphasis on new and existing buildings and infrastructure.

(iii) An action plan describing how the actions identified in paragraph (c)(2)(ii) of this section will be prioritized, implemented, and administered by the local jurisdiction. Prioritization shall include a special emphasis on the extent to which benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.

(iv) For multi-jurisdictional plans, there must be identifiable action items specific to the jurisdiction requesting FEMA approval or credit of the plan.

(4) A *plan maintenance process* that includes:

(i) A section describing the method and schedule of monitoring, evaluating, and updating the mitigation plan within a five-year cycle.

(ii) A process by which local governments incorporate the requirements of the mitigation plan into other planning mechanisms such as comprehensive or capital improvement plans, when appropriate.

(iii) Discussion on how the community will continue public participation in the plan maintenance process.

(5) *Documentation* that the plan has been formally adopted by the governing body of the jurisdiction requesting approval of the plan (e.g., City Council, County Commissioner, Tribal Council). For multi-jurisdictional plans, each jurisdiction requesting approval of the plan must document that it has been formally adopted.

(d) *Plan review.* (1) Plans must be submitted to the State Hazard Mitigation Officer for initial review and coordination. The State will then send the plan to the appropriate FEMA Regional Office for formal review and approval.

(2) The Regional review will be completed within 45 days after receipt from the State, whenever possible.

(3) Plans must be reviewed, revised if appropriate, and resubmitted for approval within five years in order to continue to be eligible for HMGP project grant funding.

(4) Managing States that have been approved under the criteria established by FEMA pursuant to 42 U.S.C. 5170c(c) will be delegated approval authority for local mitigation plans, and the review will be based on the criteria in this part. Managing States will review the plans within 45 days of receipt of the plans, whenever possible, and provide a copy of the approved plans to the Regional Office.

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

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

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

2a. Revise Part 206, Subpart M to read as follows:

Subpart M—Minimum Standards

Sec.
206.400 General.
206.401 Local standards.
206.402 Compliance.

§ 206.400 General.

(a) As a condition of the receipt of any disaster assistance under the Stafford Act, the applicant shall carry out any repair or construction to be financed with the disaster assistance in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications and standards.

(b) Applicable codes, specifications, and standards shall include any disaster resistant building code that meets the minimum requirements of the National Flood Insurance Program (NFIP) as well as being substantially equivalent to the recommended provisions of the National Earthquake Hazards Reduction Program (NEHRP). In addition, the applicant shall comply with any requirements necessary in regards to Executive Order 11988, Floodplain Management, Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, and any other applicable Executive orders.

(c) In situations where there are no locally applicable standards of safety, decency and sanitation, or where there are no applicable local codes, specifications and standards governing repair or construction activities, or where the Regional Director determines that otherwise applicable codes, specifications, and standards are inadequate, then the Regional Director may, after consultation with appropriate State and local officials, require the use of nationally applicable codes, specifications, and standards, as well as safe land use and construction practices in the course of repair or construction activities.

(d) The mitigation planning process that is mandated by section 322 of the Stafford Act and 44 CFR part 201 can assist State and local governments in determining where codes, specifications, and standards are inadequate, and may need to be upgraded.

§ 206.401 Local standards.

The cost of repairing or constructing a facility in conformity with minimum codes, specifications and standards may be eligible for reimbursement under section 406 of the Stafford Act, as long as such codes, specifications and standards meet the criteria that are listed at 44 CFR 206.226(b).

§ 206.402 Compliance.

A recipient of disaster assistance under the Stafford Act must document for the Regional Director its compliance with this subpart following the completion of any repair or construction activities.

Subpart N—Hazard Mitigation Grant Program

3. Revise § 206.431 to read as follows:

§ 206.431 Definitions.

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

Applicant means a State agency, local government, Indian tribal government, or eligible private nonprofit organization, submitting an application to the grantee for assistance under the HMGP.

Enhanced State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201 as a condition of receiving increased funding under the HMGP.

Grant application means the request to FEMA for HMGP funding, as outlined in § 206.436, by a State or tribal government that will act as grantee.

Grant award means total of Federal and non-Federal contributions to complete the approved scope of work.

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State is the grantee. However, an Indian tribal government may choose to be a grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as a grantee will assume the responsibilities of a ''state'', under this subpart, for the purposes of administering the grant.

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

Local Mitigation Plan is the hazard mitigation plan required of a local or Indian tribal government acting as a subgrantee as a condition of receiving a project subgrant under the HMGP as outlined in 44 CFR 201.6.

Standard State Mitigation Plan is the hazard mitigation plan approved under 44 CFR part 201, as a condition of receiving Stafford Act assistance as outlined in § 201.4.

State Administrative Plan for the Hazard Mitigation Grant Program means the plan developed by the State to describe the procedures for administration of the HMGP.

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

Subgrant application means the request to the grantee for HMGP funding by the eligible subgrantee, as outlined in § 206.436.

Subgrantee means the government or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. Subgrantees can be a State agency, local government, private non-profit organizations, or Indian tribal government as outlined in § 206.433.

Indian tribal governments acting as a subgrantee are accountable to the State grantee.

4. Revise § 206.432(b) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of assistance.* The total of Federal assistance under this subpart shall not exceed either 15 or 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, 5183, and 5201 as follows:

(1) *Fifteen (15) percent.* Effective November 1, 2003, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 15 percent of the total estimated Federal assistance described in this paragraph. Until that date, existing, approved State Mitigation Plans will be accepted.

(2) *Twenty (20) percent.* A State with an approved Enhanced State Mitigation Plan, in effect prior to the disaster declaration, which meets the requirements outlined in 44 CFR 201.5 shall be eligible for assistance under the HMGP not to exceed 20 percent of the total estimated Federal assistance described in this paragraph.

(3) The estimates of Federal assistance under this paragraph (b) shall be based on the Regional Director's estimate of all eligible costs, actual grants, and appropriate mission assignments.

* * * * *

5. Section 206.434 is amended by redesignating paragraphs (b) through (g) as paragraphs (c) through (h), respectively; adding a new paragraph (b); revising redesignated paragraphs (c) introductory text and (c)(1); and revising redesignated paragraph (d) to read as follows:

§ 206.434 Eligibility.

* * * * *

(b) *Plan requirement.* (1) For all disasters declared on or after November 1, 2003, local and tribal government applicants for subgrants, must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2003, local mitigation plans may be developed concurrent with the implementation of subgrants.

(2) Regional Directors may grant an exception to this requirement in extraordinary circumstances, such as in a small and impoverished community when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

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

(1) Be in conformance with the State Mitigation Plan and Local Mitigation Plan approved under 44 CFR part 201;

* * * * *

(d) *Eligible activities.* (1) *Planning.* Up to 7% of the State's HMGP grant may be used to develop State, tribal and/or local mitigation plans to meet the planning criteria outlined in 44 CFR part 201.

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

(i) Structural hazard control or protection projects;

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

(iii) Retrofitting of facilities;

(iv) Property acquisition or relocation, as defined in paragraph (e) of this section;

(v) Development of State or local mitigation standards;

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

(vii) Development or improvement of warning systems.

* * * * *

6. Revise § 206.435(a) to read as follows:

§ 206.435 Project identificaiton and selection criteria.

(a) *Identification.* It is the State's responsibility to identify and select eligible hazard mitigation projects. All funded projects must be consistent with the State Mitigation Plan. Hazard Mitigation projects shall be identified and prioritized through the State, Indian tribal, and local planning process.

* * * * *

7. Revise § 206.436 to read as follows:

§ 206.436 Application procedures.

(a) *General.* This section describes the procedures to be used by the grantee in submitting an application for HMGP funding. Under the HMGP, the State or Indian tribal government is the grantee and is responsible for processing subgrants to applicants in accordance with 44 CFR part 13 and this part 206. Subgrantees are accountable to the grantee.

(b) *Governor's Authorized Representative.* The Governor's Authorized Representative serves as the grant administrator for all funds provided under the Hazard Mitigation Grant Program. The Governor's Authorized Representative's responsibilities as they pertain to procedures outlined in this section include providing technical advice and assistance to eligible subgrantees, and ensuring that all potential applicants are aware of assistance available and submission of those documents necessary for grant award.

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

(1) Name of the subgrantee, if any;

(2) State or local contact for the measure;

(3) Location of the project;

(4) Description of the measure;

(5) Cost estimate for the measure;

(6) Analysis of the measure's cost-effectiveness and substantial risk reduction, consistent with § 206.434(c);

(7) Work schedule;

(8) Justification for selection;

(9) Alternatives considered;

(10) Environmental information consistent with 44 CFR part 9, Floodplain Management and Protection of Wetlands, and 44 CFR part 10, Environmental Considerations.

(d) *Application submission time limit.* The State's application may be amended as the State identifies and selects local project applications to be funded. The State must submit all local HMGP applications and funding requests for the purpose of identifying new projects to the Regional Director within 12 months of the date of disaster declaration.

(e) *Extensions.* The State may request the Regional Director to extend the application time limit by 30 to 90 day

increments, not to exceed a total of 180 days. The grantee must include a justification in its request.

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

(g) *Indian tribal grantees.* Indian tribal governments may submit a SF 424 directly to the Regional Director.

Subpart H—Public Assistance Eligibility

* * * * *

8. Revise § 206.220 to read as follows:

§ 206.220 General.

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

9. Section 206.226 is amended by redesignating paragraphs

(b) through (j) as paragraphs (c) through (k), respectively; adding a new paragraph (b); and revising redesignated paragraph (g)(5) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, as of November 1, 2003, the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

* * * * *

(g) * * *

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

* * * * *

Dated: February 19, 2002.

Michael D. Brown,

General Counsel.

[FR Doc. 02–4321 Filed 2–25–02; 8:45 am]

BILLING CODE 6718–05–P

CFR 773.23(a)(1) through (a)(6) for a notice of suspension or rescission, showing that the person requesting review is entitled to administrative relief;

* * * * *

24. In § 4.1374, revise paragraph (a) to read as follows:

§ 4.1374 Burdens of proof.

(a) OSM shall have the burden of going forward to present a prima facie case of the validity of the notice of proposed suspension or rescission or the notice of suspension or rescission.

* * * * *

25. In § 4.1376, revise the section heading and paragraph (a) to read as follows:

§ 4.1376 Petition for temporary relief from notice of proposed suspension or rescission or notice of suspension or rescission; appeals from decisions granting or denying temporary relief.

(a) Any party may file a petition for temporary relief from the notice of proposed suspension or rescission or the notice of suspension or rescission in conjunction with the filing of the request for review or at any time before an initial decision is issued by the administrative law judge.

* * * * *

26. Revise the heading for 43 CFR 4.1380–4.1387 to read as follows:

Review of Office of Surface Mining Written Decisions Concerning Ownership or Control Challenges

27. Revise § 4.1380 to read as follows:

§ 4.1380 Scope.

Sections 4.1380 through 4.1387 govern the procedures for review of a written decision issued by OSM under 30 CFR 773.28 on a challenge to a listing or finding of ownership or control.

28. In § 4.1381, revise paragraph (a) to read as follows:

§ 4.1381 Who may file; when to file; where to file.

(a) Any person who receives a written decision issued by OSM under 30 CFR 773.28 on a challenge to an ownership or control listing or finding may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703–235–3800) within 30 days of service of the decision.

* * * * *

29. Revise § 4.1390 to read as follows:

§ 4.1390 Scope.

Sections 4.1391 through 4.1394 set forth the procedures for obtaining review of an OSM determination under 30 CFR 761.16 that a person does or does not have valid existing rights.

30. In § 4.1391, revise paragraphs (a) and (b) to read as follows:

§ 4.1391 Who may file; where to file; when to file; filing of administrative record.

(a) The person who requested a determination under 30 CFR 761.16 or any person with an interest that is or may be adversely affected by a determination that a person does or does not have valid existing rights may file a request for review of the determination with the office of the OSM official whose determination is being reviewed and at the same time shall send a copy of the request to the Interior Board of Land Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, VA 22203 (telephone 703–235–3750). OSM shall file the complete administrative record of the determination under review with the Board as soon as practicable.

(b) OSM must provide notice of the valid existing rights determination to the person who requested that determination by certified mail, or by overnight delivery service if the person has agreed to bear the expense of this service.

(1) When the determination is made independently of a decision on an application for a permit or for a permit boundary revision, a request for review shall be filed within 30 days of receipt of the determination by a person who has received a copy of it by certified mail or overnight delivery service. The request for review shall be filed within 30 days of the date of publication of the determination in a newspaper of general circulation or in the **Federal Register**, whichever is later, by any person who has not received a copy of it by certified mail or overnight delivery service.

(2) When the determination is made in conjunction with a decision on an application for a permit or for a permit boundary revision, the request for review must be filed in accordance with § 4.1362.

* * * * *

31. Revise § 4.1394 to read as follows:

§ 4.1394 Burden of proof.

(a) If the person who requested the determination is seeking review, OSM shall have the burden of going forward to establish a prima facie case and the person who requested the determination shall have the ultimate burden of persuasion.

(b) If any other person is seeking review, that person shall have the burden of going forward to establish a prima facie case and the ultimate burden of persuasion that the person who requested the determination does or does not have valid existing rights.

[FR Doc. 02–24417 Filed 9–30–02; 8:45 am]

BILLING CODE 4310–79–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 201 and 206

RIN 3067–AD22

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim final rule.

SUMMARY: This rule extends the date by which State and local governments must develop mitigation plans as a condition of grant assistance in compliance with 44 CFR Part 201. The regulations in Part 201 outline the requirements for State and local mitigation plans, which must be completed by November 1, 2003 in order to continue to receive FEMA grant assistance. This interim final rule extends that date to November 1, 2004.

DATES: *Effective Date:* October 1, 2002.

Comment Date: We will accept written comments through December 2, 2002.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840,Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Terry Baker, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC, 20472, 202–646–4648, (facsimile) 202–646–3104, or (e-mail) *terry.baker@fema.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Throughout the preamble and the rule the terms ''we'', ''our'' and ''us'' refer to FEMA.

On February 26, 2002, FEMA published an interim final rule implementing Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under § 104 of the Disaster Mitigation Act of 2000, (DMA 2000) Pub. L. 106–390. This identified the requirements for State and local mitigation plans necessary for FEMA assistance. The critical portion of the current interim

final rule being published extends the date that the planning requirements take effect. The date is being modified from November 1, 2003 to November 1, 2004 for all programs except the Pre-Disaster Mitigation (PDM) program.

The date that local mitigation plans will be required for the PDM program as a condition of ''brick and mortar'' project grant funding will continue to be November 1, 2003. Our objective is to encourage the use of the PDM program to develop State and local mitigation plans that will meet the criteria for all of our mitigation programs. The initial implementation of the PDM program allows States to prioritize the funding towards the development of mitigation plans in their most high-risk communities, positioning them to be eligible for project grant funding when it becomes available. The PDM program will benefit from the experiences in the Flood Mitigation Assistance (FMA) program, which has had a planning requirement for many years. States often prioritize FMA planning funds to a community in one year, with the implementation of the project occurring after the appropriate planning has been completed.

We received many thoughtful comments on much of the rule, and we intend to address them all prior to finalizing the rule. However, the overwhelming number of comments regarding the effective date for the new planning requirements on both the State and local governments indicated to us a need to extend that date. This new interim final rule will address this issue, and clarify the planning requirement for the recently published Fire Management Assistance Grant Program final rule.

Since publication of the interim final rule, it became clear to us that, in some cases, there was a need to extend the effective date of the planning requirement to allow more time for plan development. An additional year will allow State, tribal, and local governments time to identify necessary resources, establish support for the planning process, and develop meaningful mitigation plans. Legislative sessions, which in some cases may be once every two years, may be necessary to obtain funding for plan development and/or adoption of the plan prior to submittal to FEMA. Many State and local fiscal years run from July through June, and budget requests must be made months prior to the beginning of the fiscal year. This has made it difficult for many jurisdictions to begin the planning process. Our intention in extending the date is to allow for more thoughtful and comprehensive development of plans and implementation of this regulation. Nearly all of those commenting on the rule recognize the importance of planning. The generally accepted model is that good mitigation happens when good mitigation plans are the basis for the actions taken.

Even though we are extending the date for meeting the planning requirements, we encourage States and localities to continue to work on getting plans developed and approved as soon as feasible, and not to wait until the deadline to begin the process. It is important to note that although there is no deadline for approval of Enhanced State Mitigation Plans in order to qualify for the 20 percent HMPG funding, it will only be available to States if the plan is approved prior to a disaster declaration.

Although many comments addressed the need to extend the deadline, only a few provided specific alternative dates. We received several comments requesting a phased approach to the deadline for communities based on general risk levels or the priorities identified in a State plan. At this point, FEMA is not considering any option for a phased approach to the timeline since we believe that it would make this requirement too difficult to administer, for both States and FEMA. We believe that the one-year extension for the HMGP will address most of the concerns regarding the effective date of the planning requirements.

We have also received some questions regarding the relationship of the planning requirements of the Fire Management Assistance Grant Program to the plans developed under 44 CFR part 201. A Standard or Enhanced State Mitigation plan, which includes an evaluation of wildfire risk and mitigation, as identified in 44 CFR part 201 will meet the planning requirement of the Fire Management Assistance Grant Program. Until States develop and have either of those plans approved by FEMA, States must comply with the fire management planning requirement as stated in 44 CFR part 204 by ensuring that there is a fire component to the existing State Mitigation Plan or a separate wildfire mitigation plan.

Finally, we would like to clarify that for grants awarded under any hazard mitigation program prior to October 30, 2000 for the purpose of developing or updating a hazard mitigation plan, we will not provide an increase in funding or extensions for changes in the scope of work for purposes of meeting the enhanced state plan criteria, since the enhanced plan concept did not exist prior to the Disaster Mitigation Act of 2000, enacted on that date.

We encourage comments on this interim final rule, and we will make every effort to involve all interested parties, including those who commented on the original interim final planning rule, prior to the development of the Final Rule.

Justification for Interim Final Rule

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to public interest.

This interim final rule extends the date that State, tribal, and local governments have to develop mitigation plans required as a condition of FEMA grant assistance. State, tribal, and local governments are currently under the assumption that plans are required by November 1, 2003, whereas this interim final rule extends that date to November 1, 2004 for the HMGP. It does not affect the date for compliance for other programs, such as the Pre-disaster Mitigation (PDM) program. In order for State, local and tribal resources to be appropriately identified and used, it is essential that the date extension be made effective as soon as possible. We believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States and communities by identifying the new effective date for planning requirement under 44 CFR part 201. Therefore, we find that prior notice and comment on this rule would not further the public interest. We actively encourage and solicit comments on this interim final rule from interested parties, and we will consider them as well as those submitted on the original interim final planning rule in preparing the final rule. For these reasons, we believe we have good cause to publish an interim final rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to review by The Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The purpose of this rule is to extend the date by which State and local governments have to prepare or update their plans to meet the criteria identified in 44 CFR part 201. The original date, November 1, 2003, was determined to be difficult to meet. This interim final rule extends that date to November 1, 2004 for the post disaster Hazard Mitigation Grant Program. The date of November 1, 2003 will still apply to project grants under the Pre-disaster Mitigation program. As such, the rule itself will not have an effect on the economy of more than $100,000,000.

Therefore, this rule is not a significant regulatory action and is not an economically significant rule under Executive Order 12866. OMB has not reviewed this rule under Executive Order 12866.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, we incorporate environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that we can anticipate under the final rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. This rule extends the date for development or update of State and local mitigation plans in compliance with 44 CFR part 201. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) we submitted a request for review and approval of a new collection of information when the initial interim final rule was published on February 26, 2002. OMB approved this collection of information for use through August 31, 2002, under the emergency processing procedures in OMB regulation 5 CFR 1320.1, OMB Number 3067–0297. There have been no changes to the collection of information, and we have submitted a request for OMB approval to continue the use of the collection of information for a term of three years. The request is being processed under OMB's normal clearance procedures in accordance with provisions of OMB regulation 5 CFR 1320.11.

This new interim final rule simply extends the date by which States and communities have to comply with the planning requirements, and clarifies which FEMA programs are affected by these requirements. The changes do not affect the collection of information; therefore, no change to the request for the collection of information is necessary. In summary, this interim final rule complies with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the OMB paperwork clearance package by contacting Ms. Muriel Anderson at (202) 646–2625 (voice), (202) 646–3347 (facsimile), or by e-mail at *informationcollectios@fema.gov*.

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

We will continue to evaluate the planning requirements and will work with interested parties as we implement the planning requirements of 44 CFR part 201. In addition, we actively encourage and solicit comments on this interim final rule from interested parties, and we will consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

We have reviewed this interim final rule under Executive Order 13175, which became effective on February 6, 2001. In reviewing the interim final rule, we find that it does not have ''tribal implications'' as defined in Executive Order 13175 because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Moreover, the interim final rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

Congressional Review of Agency Rulemaking

We have sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is a not ''major rule'' within the meaning of that Act. It is an administrative action to extend the time State and local governments have to prepare mitigation plans required by section 322 of the Stafford Act, as enacted in DMA 2000.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. This final rule is subject to the information collection requirements of the Paperwork Reduction Act, and OMB has assigned Control No. 3067–0297. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Parts 201 and Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and record keeping requirements.

Accordingly, amend 44 CFR, chapter I, as follows:

PART 201—MITIGATION PLANNING

1. The authority for Part 201 continues to read as follows:

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

2. Revise § 201.3(c)(3) to read as follows:

§ 201.3 Responsibilities.

* * * * *

(c) * * *

(3) At a minimum, review and, if necessary, update the Standard State Mitigation Plan by November 1, 2004 and every three years from the date of the approval of the previous plan in order to continue program eligibility.

* * * * *

3. Revise § 201.4(a) to read as follows:

§ 201.1 Standard State Mitigation Plans.

(a) *Plan requirement.* By November 1, 2004, States must have an approved Standard State Mitigation plan meeting the requirements of this section in order to receive assistance under the Stafford Act, although assistance authorized under disasters declared prior to November 1, 2004 will continue to be made available. Until that date, existing, FEMA approved State Mitigation Plans will be accepted. In any case, emergency assistance provided under 42 U.S.C 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. States may choose to include the requirements of the HMGP Administrative Plan in their mitigation plan, but must comply with the updates, amendments or revisions requirement listed under 44 CFR 206.437.

* * * * *

4. Revise § 201.6(a) to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) *Plan requirements.*

(1) For disasters declared after November 1, 2004, a local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of the HMGP project grant.

(2) By November 1, 2003, local governments must have a mitigation plan approved pursuant to this section in order to receive a project grant through the Pre-Disaster Mitigation (PDM) program, authorized under § 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133. PDM planning grants will continue to be made available to all local governments after this time to enable them to meet the requirements of this section.

(3) Regional Directors may grant an exception to the plan requirement in extraordinary circumstances, such as in a small and impoverished community, when justification is provided. In these cases, a plan will be completed within 12 months of the award of the project grant. If a plan is not provided within this timeframe, the project grant will be terminated, and any costs incurred after notice of grant's termination will not be reimbursed by FEMA.

(4) Multi-jurisdictional plans (*e.g.* watershed plans) may be accepted, as appropriate, as long as each jurisdiction has participated in the process and has officially adopted the plan. State-wide plans will not be accepted as multi-jurisdictional plans.

* * * * *

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

4. The authority for Part 206 continues to read as follows:

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

5. Revise § 206.432(b)(1) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) * * *

(1) *Fifteen (15) Percent.* Effective November 1, 2004, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 15 percent of the total estimated Federal assistance described in this paragraph. Until that date, existing, FEMA approved State Mitigation Plans will be accepted.

* * * * *

6. Revise § 206.434(b)(1) to read as follows:

§ 206.434 Elgibility.

* * * * *

(b) * * *

(1) For all disasters declared on or after November 1, 2004, local and tribal government applicants for subgrants must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of subgrants.

* * * * *

Dated: September 26, 2002.

Joe M. Allbaugh,

Director.

[FR Doc. 02–24998 Filed 9–30–02; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–2315, MB Docket No. 02–130, RM–10438]

Digital Television Broadcast Service; Des Moines, IA

AGENCY: Federal Communications Commission.

have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This action also does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*) generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: October 22, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ 40 CFR Part 51 is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Protection of Visibility

■ 2. Section 51.309 is amended by revising paragraphs (b)(6) and (d)(5)(i); redesignating paragraph (d)(5)(ii) as paragraph (d)(5)(iv); and adding paragraphs (d)(5)(ii) and (d)(5)(iii) to read as follows:

§ 51.309 Requirements related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(6) Mobile Source Emission Budget means the lowest level of VOC, NO_X, SO_2 elemental and organic carbon, and fine particles which are projected to occur in any area within the transport region from which mobile source emissions are determined to contribute significantly to visibility impairment in any of the 16 Class I areas.

* * * * *

(d) * * *

(5) * * *

(i) Statewide inventories of current annual emissions and projected future annual emissions of VOC, NO_X, SO_2, elemental carbon, organic carbon, and fine particles from mobile sources for the years 2003 to 2018. The future year inventories must include projections for the year 2005, or an alternative year that is determined by the State to represent the year during which mobile source emissions will be at their lowest levels within the State.

(ii) A determination whether mobile source emissions in any areas of the State contribute significantly to visibility impairment in any of the 16 Class I Areas, based on the statewide inventory of current and projected mobile source emissions.

(iii) For States with areas in which mobile source emissions are found to contribute significantly to visibility impairment in any of the 16 Class I areas:

(A) The establishment and documentation of a mobile source emissions budget for any such area, including provisions requiring the State to restrict the annual VOC, NO_X, SO_2, elemental and organic carbon, and/or fine particle mobile source emissions to their projected lowest levels, to implement measures to achieve the budget or cap, and to demonstrate compliance with the budget.

(B) An emission tracking system providing for reporting of annual mobile source emissions from the State in the periodic implementation plan revisions required by paragraph (d)(10) of this section. The emission tracking system must be sufficient to determine the States' contribution toward the Commission's objective of reducing emissions from mobile sources by 2005 or an alternate year that is determined by the State to represent the year during which mobile source emissions will be at their lowest levels within the State, and to ensure that mobile source emissions do not increase thereafter.

* * * * *

[FR Doc. 03–27159 Filed 10–27–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 201, 204 and 206

RIN 1660–AA17

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim final rule.

SUMMARY: This rule clarifies the date that local mitigation plans will be required as a condition of receiving project grant funds under the Pre-Disaster Mitigation (PDM) program. In addition, we are taking the opportunity to correct cross references in our regulations to address areas of inconsistency regarding the planning requirement in the Fire Management Assistance Grant Program and Public Assistance Eligibility that should have been addressed previously.

DATES: Effective Date: October 28, 2003. Comment Date: We will accept written comments through December 29, 2003.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Karen Helbrecht, Program Planning Branch, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington DC, 20472, 202–646–3358, (facsimile) 202–646–4127, or (email) *karen.helbrecht@dhs.gov.*

SUPPLEMENTARY INFORMATION: On February 26, 2002, FEMA published an interim final rule at 67 FR 8844 implementing section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under section 104 of the Disaster Mitigation Act of 2000, (DMA 2000) Public Law 106–390. This identified the

requirements for State, tribal, and local mitigation plans necessary for Hazard Mitigation Grant Program (HMGP) project funding. On October 1, 2002, FEMA published a change to that rule at 67 FR 61512, extending the date that the planning requirements take effect. This rule stated that for disasters declared on or after November 1, 2004, State Mitigation Plans will be required in order to receive non-emergency Stafford Act assistance, and local mitigation plans will be required in order to receive HMGP project grants.

However, the date that local mitigation plans will be required for the Pre-Disaster Mitigation program as a condition of project grant funding was left at November 1, 2003. The intent was to make grants and technical assistance available in fiscal year 2003 to assist State and local governments to develop mitigation plans and implement mitigation projects during the first year of the competitive grant program. However, because the application period for the competitive PDM program will not close until October 6, 2003, the project grants will not be awarded until after November 1, 2003. The intent of this rule change is to clarify that the November 1, 2003 effective date for the planning requirement will apply only to PDM grant funds awarded under any Notice of funding opportunity issued after that date. Essentially, for PDM grant funds made available in fiscal year 2004 and beyond, local governments must have an approved mitigation plan in order to receive a project grant under the PDM program.

In addition, this rule updates the planning requirement identified in 44 CFR part 204, Fire Management Assistance Grant Program as well as part 206, subpart H, Public Assistance Eligibility. The changes bring these sections into conformity with the existing planning rule, 44 CFR part 201.

FEMA received many thoughtful comments, and intends to address them all prior to finalizing the rule. However, in the interest of expediting these minor clarifying and conforming changes, FEMA is issuing another interim final rule. FEMA encourages comments on this interim final rule, and will make every effort to involve all interested parties, including those who commented on the original interim final planning rules, prior to the development of the Final Rule.

Administrative Procedure Act Statement.

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to the public interest.

This interim final rule clarifies the date that local governments, as well as a tribe applying as a sub-applicant, must have a mitigation plan as a condition of receiving FEMA PDM project grant assistance. This interim final rule clarifies that the plan requirement applies only to PDM project grants awarded under any Notice of funding opportunity issued after November 1, 2003. The Notice of Availability of Funding (NOFA) for the fiscal year 2003 PDM program was not published until July 7, 2003, making it difficult to make grant awards by November 1, 2003. In order to make timely awards for the fiscal year 2003 PDM program, it is essential that the clarification of the effective date of the planning requirement be made effective as soon as possible.

In addition, this rule brings the mitigation planning requirements for the Fire Management Assistance Grant Program, and FEMA's Public Assistance Program into conformity with 44 CFR part 201. FEMA believes it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find good cause for the interim final rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States, tribes, and communities by clarifying the effective date for planning requirements under 44 CFR part 201. Therefore, FEMA finds that prior notice and comment on this rule would not further the public interest. FEMA actively encourages, solicits, and will consider comments on this interim final rule from interested parties, as well as those submitted on the original interim final planning rule, in preparing the final rule. For these reasons, FEMA believes there is good cause to publish an interim final rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, Oct. 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in th[e] Executive [O]rder.

The purpose of this rule is to clarify the date by which State, tribal, and local governments have to prepare or update their plans to meet the criteria identified in 44 CFR part 201. This interim final rule clarifies that local governments must have a mitigation plan approved in order to receive a project grant through the PDM program under any Notice of funding opportunity issued after November 1, 2003, in fiscal year 2004 and beyond. As such, the rule itself will not have an effect on the economy of more than $100,000,000.

Therefore, this rule is not a significant regulatory action and is not an economically significant rule under Executive Order 12866. The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866.

Executive Order 12898, Environmental Justice

Environmental Justice is incorporated into policies and programs under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from program participation, denying persons program benefits, or subjecting persons to discrimination because of their race, color, or national origin.

No action that FEMA can anticipate under the final rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. This rule extends the date for development or update of State and local mitigation plans in compliance with 44 CFR part 201. Accordingly, the requirements of Executive Order 12898 do not apply to this interim final rule.

Paperwork Reduction Act of 1995

This new interim final rule simply clarifies the date by which States and communities have to comply with the planning requirements, and clarifies which FEMA programs are affected by these requirements. The changes do not affect the collection of information; therefore, no change to the request for the collection of information is necessary. In summary, this interim final rule complies with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria to which agencies must adhere in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA reviewed this rule under Executive Order 13132 and concluded that the rule has no federalism implications as defined by the Executive Order. FEMA has determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

FEMA will continue to evaluate the planning requirements and work with interested parties as the planning requirements of 44 CFR part 201 are implemented. In addition, we actively encourage and solicit comments on this interim final rule from interested parties, and will consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

FEMA has reviewed this interim final rule under Executive Order 13175, which became effective on February 6, 2001. In this review, no ''tribal implications'' as defined in Executive Order 13175 were found because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Moreover, the interim final rule does not impose substantial direct compliance costs on tribal governments, nor does it preempt tribal law, impair treaty rights or limit the self-governing powers of tribal governments.

Congressional Review of Agency Rulemaking.

FEMA sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is not a ''major rule'' within the meaning of that Act. It is an administrative action to extend the time State and local governments have to prepare mitigation plans required by Section 322 of the Stafford Act, as enacted in DMA 2000.

The rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

In compliance with section 808(2) of the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 8(2), for good cause we find that notice and public procedure on this interim final rule are impracticable, unnecessary, or contrary to the public interest. In order to make timely awards for the fiscal year 2003 PDM program, it is essential that the clarification of the effective date of the planning requirement be made effective as soon as possible. Accordingly, this interim final rule is effective on October 28, 2003.

List of Subjects in 44 CFR Part 201, Part 204, and Part 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and record keeping requirements.

■ Accordingly, FEMA amends 44 CFR Parts 201, 204, and 206 as follows:

PART 201—MITIGATION PLANNING

■ 1. The authority citation for part 201 continues to read as follows:

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

■ 2. Section 201.6(a)(2) is revised to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) * * *

(2) Local governments must have a mitigation plan approved pursuant to this section in order to receive a project grant through the Pre-Disaster Mitigation (PDM) program under any Notice of funding opportunity issued after November 1, 2003. The PDM program is authorized under § 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133. PDM planning grants will continue to be made available to local governments after this time to enable them to meet the requirements of this section.

* * * * *

PART 204—FIRE MANAGEMENT ASSISTANCE GRANT PROGRAM

■ 3. The authority citation for part 204 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR, 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p 412; and E.O. 12673, 54 FR 12571, 2 CFR, 1989 Comp., p. 214.

■ 4. Revise the definition of *Hazard mitigation plan* in § 204.3 to read as follows:

§ 204.3 Definitions used throughout this part.

* * * * *

Hazard mitigation plan. A plan to develop actions the State, local, or tribal government will take to reduce the risk to people and property from all hazards. The intent of hazard mitigation planning under the Fire Management Assistance Grant Program is to identify wildfire hazards and cost-effective mitigation alternatives that produce

long-term benefits. We address mitigation of fire hazards as part of the State's comprehensive Mitigation Plan, described in 44 CFR part 201.

* * * * *

■ 5. Revise § 204.51(d)(2) to read as follows:

§ 204.51 Application and approval procedures for a fire management assistance grant.

* * * * *

(d) * * *

(2) *Hazard Mitigation Plan.* As a requirement of receiving funding under a fire management assistance grant, a State, or tribal organization, acting as Grantee, must:

(i) Develop a Mitigation Plan in accordance with 44 CFR part 201 that addresses wildfire risks and mitigation measures; or

(ii) Incorporate wildfire mitigation into the existing Mitigation Plan developed and approved under 44 CFR part 201 that also addresses wildfire risk and contains a wildfire mitigation strategy and related mitigation initiatives.

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

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

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

■ 7. Revise § 206.226(b) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, as of November 1, 2004, the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

* * * * *

Dated: October 22, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–27140 Filed 10–27–03; 8:45 am]

BILLING CODE 9110–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. OST–2003–15858]

RIN 2105–AD30

Standard Time Zone Boundary in the State of South Dakota: Relocation of Jones, Mellette, and Todd Counties

AGENCY: Office of the Secretary (OST), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: In response to a concurrent resolution of the South Dakota legislature, DOT is relocating the boundary between mountain time and central time in the State of South Dakota. DOT is placing all of Jones, Mellette, and Todd Counties in the central time zone.

EFFECTIVE DATE: 2 a.m. MDT Sunday, October 26, 2003, which is the changeover from daylight saving to standard time.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, Washington, DC 20590, (202) 366–9315, or by e-mail at *joanne.petrie@ost.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is ''regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce.''

Time zone boundaries are set by regulation (49 CFR part 71). Currently, under regulation, Mellette and Todd Counties, and the western portion of Jones County, are located in the mountain standard time zone. The eastern portion of Jones County is currently located in the central time zone.

Request for a Change

The South Dakota legislature adopted a concurrent resolution (Senate Concurrent Resolution No. 3) petitioning the Secretary of Transportation to place all of Jones, Mellette, and Todd counties into the central time zone. The resolution was adopted by the South Dakota Senate on February 3, 2003, and concurred in by the South Dakota House of Representatives on February 7, 2003. The resolution noted, among other things, that the vast majority of residents of those counties observe central standard time, instead of mountain standard time, because their commercial and social ties are to communities located in the central time zone. It further stated that there would be much less confusion and that it would be much more convenient for the commerce of these counties if these counties were located in the central time zone. A copy of the resolution has been placed in the docket.

Procedure for Changing a Time Zone Boundary

Under DOT procedures to change a time zone boundary, the Department will generally begin a rulemaking proceeding if the highest elected officials in the area make a *prima facie* case for the proposed change. DOT determined that the concurrent resolution of the South Dakota legislature made a *prima facie* case that warranted opening a proceeding to determine whether the change should be made. On August 11, 2003, DOT published a notice of proposed rulemaking (68 FR 47533) proposing to make the requested change and invited public comment. The NPRM proposed that this change go into effect during the next changeover from daylight saving time to standard time, which is on October 26, 2003.

Comments

Two comments were filed. One, which was filed by the South Dakota Secretary of State, supported the change. He stated that ''The proposal to place all of Jones, Mellette and Todd Counties in the central time zone would eliminate confusion these counties have when elections are conducted. Eliminating this confusion will improve voter turnout in these counties. South Dakota's polling hours are from 7 a.m. to 7 p.m. legal time. These counties that are legally set in mountain time follow central time for their business hours, therefore causing confusion in the past on what time zone to use for polling hours for local, state and federal elections.'' The other comment objected to daylight saving time observance and suggested that all states should be in the same time zone.

We did not hold a public hearing in the area because of the unusual circumstances in this case. According to the State legislature, the vast majority of people in the affected area are already

PART 292—NATIONAL RECREATION AREAS

Subpart C—Sawtooth National Recreation Area—Private Lands

■ 1. The authority citation for subpart C continues to read as follows:

Authority: Sec. 4(a), Act of Aug. 22, 1972 (86 Stat. 613).

■ 2. Amend § 292.16 by revising paragraph (e)(2)(ii) to read as follows:

§ 292.16 Standards.

* * * * *

(e) * * *

(2) * * *

(ii) Not more than two outbuildings with each residence. Aggregate square foot area of outbuildings not to exceed 850 square feet and to be limited to one story not more than 22 feet in height.

* * * * *

Dated: September 7, 2004.

David P. Tenny,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 04–20592 Filed 9–10–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Parts 201 and 206

RIN 1660–AA17

Hazard Mitigation Planning and Hazard Mitigation Grant Program

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule.

SUMMARY: This rule provides State and Indian tribal governments with a mechanism to request an extension to the date by which they must develop State Mitigation Plans as a condition of grant assistance. FEMA regulations outline the requirements for State Mitigation Plans, which must be completed by November 1, 2004 in order to receive FEMA grant assistance. This interim rule allows FEMA to grant justifiable extensions, in extraordinary circumstances, for State and Indian tribal governments of up to six months, or no later than May 1, 2005. In addition, this interim rule allows mitigation planning grants provided through the Pre-Disaster Mitigation (PDM) program to continue to be available to State, Indian tribal, and local governments after November 1, 2004.

DATES: *Effective Date:* September 13, 2004.

Comment Date: We will accept written comments through November 12, 2004.

ADDRESSES: Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840,Washington DC 20472, (facsimile) 202–646–4536, or (e-mail) *FEMA-RULES@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Karen Helbrecht, Risk Reduction Branch, Mitigation Division, Federal Emergency Management Agency, 500 C Street, SW., Washington DC 20472, (phone) 202–646–3358, (facsimile) 202–646–3104, or (e-mail) *karen.helbrecht@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Introduction

On February 26, 2002, FEMA published an interim rule at 67 FR 8844 implementing Section 322 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act or the Act), 42 U.S.C. 5165, enacted under Section 104 of the Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106–390. This identified the requirements for State, tribal, and local mitigation plans. On October 1, 2002, FEMA published a change to that rule at 67 FR 61512, extending the date that the planning requirements take effect. The October 1, 2002 interim rule stated that by November 1, 2004, FEMA approved State Mitigation Plans were required in order to receive non-emergency Stafford Act assistance, and local mitigation plans were required in order to receive mitigation project grants. The critical portion of this interim rule provides a mechanism for Governors or Indian tribal leaders to request an extension to the date that the planning requirements take effect for State level mitigation plans. This interim rule allows extensions up to May 1, 2005 to States or Indian tribal governments who submit the necessary justification.

While all States and many Indian tribal governments have been working on the required State Mitigation Plans, and many have been very successful, a few have encountered extraordinary difficulties in meeting the November 1, 2004 deadline. Due to the significant implications of not having an approved plan, FEMA has decided to provide an option for States and Indian tribal governments that may not be able to meet the deadline, in order to allow all States to develop effective Mitigation plans. The option allows the Governor or Indian tribal leader to ask FEMA for an extension. A Governor or Indian tribal leader would be required to submit a written request to FEMA for the extension. The written request would include the justification for the extension; the reasons the plan has not been completed; the amount of additional time needed to complete the plan; and a strategy for completing the plan. FEMA would review each request, and could grant up to a six-month extension. However, the deadline would not be later than May 1, 2005. Governors or Indian tribal leaders could request this extension at any time after publication of this interim rule.

In addition, the current rule requirement states that States, or Indian tribal governments who choose to apply directly to FEMA, must have an approved mitigation plan by November 1, 2004 to be eligible for planning or project grant funding under the Pre-Disaster Mitigation (PDM) program. This rule change allows PDM planning grants to continue to be available to States and Indian tribal governments who do not have a FEMA approved mitigation plan. Local governments, and Indian tribal governments acting as subgrantees, continue to be eligible for PDM planning grants under the current requirement. Mitigation planning is the foundation to saving lives, protecting properties, and developing disaster resistant communities. The PDM program is the primary mechanism that provides grant assistance for mitigation planning. State and Indian tribal governments will be able to apply for a PDM planning grant in order to develop or update their mitigation plan which, when approved by FEMA, will maintain their eligibility for non-emergency Stafford Act assistance.

Finally, this interim rule makes technical and conforming amendments to other sections of FEMA regulations affected by the provision of Part 201 Mitigation planning, and adjusts the general major disaster allocation for the Hazard Mitigation Grant Program (HMGP) from 15 percent to 7½ percent to be consistent with a recent statutory amendment.

FEMA encourages comments on this interim rule.

Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act,

however, provides an exception from that general rule where the agency for good cause finds that the procedures for prior comment and response are impracticable, unnecessary, or contrary to public interest.

This interim rule provides an option for States and Indian tribal governments to request an extension to the date by which they have to develop State Mitigation Plans required as a condition of receiving non-emergency Stafford Act grant assistance. State and Indian tribal governments are currently under the assumption, consistent with the current requirements, that plans are required by November 1, 2004, whereas this interim rule provides a mechanism to extend that date up to May 1, 2005, in certain cases. It does not affect the date that local plans will be required for other programs, such as the PDM program. In order for State and Indian tribal government resources to be appropriately identified and available to complete the required plans, it is essential that the date extension be made effective as soon as possible. If the rule were delayed beyond the November 1, 2004 deadline, and a State or Indian tribal government did not have a FEMA approved mitigation plan, all entities within that State or Indian tribe would be ineligible for grants to restore damaged public facilities, Fire Management Assistance grants, and HMGP funding. The benefits of this rule will only be realized if the rule is immediately effective and available to State and Indian tribal governments prior to the existing November 1, 2004 deadline. As a practical matter, since FEMA anticipates opening the application period for the FY2004/2005 PDM program in September, this rule is necessary to ensure that FEMA can provide timely guidance to States and Indian tribal governments of their eligibility for PDM planning funds, so they do not miss the opportunity to submit the necessary applications. FEMA believes that it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), FEMA finds that there is good cause for the interim rule to take effect immediately upon publication in the **Federal Register** in order to meet the needs of States and communities by identifying the new effective date for planning requirement under 44 CFR Part 201.

The rule also allows PDM planning grants to continue to be available to States and Indian tribal governments who do not have a FEMA approved mitigation plan. The existing deadline for States to have a FEMA approved mitigation plan is November 1, 2004, and since the next round of competition for PDM funding will occur after that deadline, it is essential that the change in the planning requirement be made effective as soon as possible. This will allow State and Indian tribal governments to apply and compete for planning grants during the next PDM competitive cycle.

Therefore, FEMA finds that prior notice and comment on this rule would not further the public interest. We actively encourage and solicit comments on this interim rule from interested parties, and we will consider them as well as those submitted on the original interim planning rule in preparing the final rule. For these reasons, FEMA believes that we have good cause to publish an interim rule.

National Environmental Policy Act

44 CFR 10.8(d)(2)(ii) excludes this rule from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(iii), such as the development of plans under this section.

Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to OMB review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The purpose of this rule is to extend the date by which State and Indian tribal governments have to prepare or update their mitigation plans to meet the criteria identified in 44 CFR Part 201. This interim rule provides a mechanism for States and Indian tribal governments to request an extension of the November 1, 2004 deadline for State Mitigation Plans, and allows State and Indian tribal governments that do not have an approved plan to compete for PDM planning funds after the deadline. As such, the rule itself will not have an effect on the economy of more than $100,000,000, nor otherwise constitute a significant regulatory action.

The Office of Management and Budget has concluded that this rule is not significant for purposes of Executive Order 12866.

Executive Order 12898, Environmental Justice

Under Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, FEMA incorporates environmental justice into our policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in our programs, denying persons the benefits of our programs, or subjecting persons to discrimination because of their race, color, or national origin.

No action that we can anticipate under the interim rule will have a disproportionately high or adverse human health and environmental effect on any segment of the population. This rule extends the date for development or update of State and Indian tribal mitigation plans in compliance with 44 CFR 201.4. Accordingly, the requirements of Executive Order 12898 do not apply to this interim rule.

Paperwork Reduction Act of 1995

This new interim rule simply provides an option to extend the date by which States have to comply with the planning requirements, and clarifies the planning requirements for the PDM program. The changes do not affect the collection of information; therefore, no change to the request for the collection of information is necessary. In summary, this interim rule complies with the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and

implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under Executive Order 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

We will continue to evaluate the planning requirements and will work with interested parties as we implement the planning requirements of 44 CFR Part 201. In addition, we actively encourage and solicit comments on this interim rule from interested parties, and we will consider them in preparing the final rule.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

FEMA has reviewed this interim rule under Executive Order 13175, which became effective on February 6, 2001. In reviewing the interim rule, we find that it does not have ''tribal implications'' as defined in Executive Order 13175 because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Moreover, the interim rule does not impose substantial direct compliance costs on Indian tribal governments, nor does it preempt tribal law, impair treaty rights nor limit the self-governing powers of Indian tribal governments. In fact, this interim rule relieves a burden on Indian tribal governments by allowing them to apply for PDM planning grants after the November 1, 2004 deadline.

Congressional Review of Agency Rulemaking

FEMA has sent this interim rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. This interim rule is a not ''major rule'' within the meaning of that Act. It is an administrative action to extend the time State and local governments have to prepare mitigation plans required by Section 322 of the Stafford Act, as enacted in DMA 2000.

The interim rule will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, and any enforceable duties that we impose are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Parts 201 and 206

Administrative practice and procedure, Disaster assistance, Grant programs, Mitigation planning, Reporting and recordkeeping requirements.

■ Accordingly, FEMA amends 44 CFR, Parts 201 and 206 as follows:

PART 201—MITIGATION PLANNING

■ 1. The authority citation for part 201 continues to read as follows:

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

■ 2. In § 201.3 add paragraph (c)(7) to read as follows:

§ 201.3 Responsibilities.

* * * * *

(c) * * *

(7) If necessary, submit a request from the Governor to the Director of FEMA, requesting an extension to the plan deadline in accordance with § 201.4(a)(2).

* * * * *

■ 3. Revise § 201.4(a) to read as follows:

§ 201.4 Standard State Mitigation Plans.

(a) *Plan requirement.* (1) By November 1, 2004, States must have an approved Standard State Mitigation Plan meeting the requirements of this section in order to receive assistance under the Stafford Act, although assistance authorized under disasters declared prior to November 1, 2004 will continue to be made available. Until that date, existing, FEMA approved State Mitigation Plans will be accepted. In any case, emergency assistance provided under 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, 5192 will not be affected. Mitigation planning grants provided through the Pre-Disaster Mitigation (PDM) program, authorized under Section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5133, will also continue to be available. The mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. States may choose to include the requirements of the HMGP Administrative Plan in their mitigation plan, but must comply with the requirement for updates, amendments, or revisions listed under 44 CFR 206.437.

(2) A Governor, or Indian tribal leader, may request an extension to the plan approval deadline by submitting a request in writing to the Director of FEMA, through the Regional Director. At a minimum, this must be signed by the Governor or the Indian tribal leader, and must include justification for the extension, identification of the reasons the plan has not been completed, identification of the amount of additional time required to complete the plan, and a strategy for finalizing the plan. The Director of FEMA will review each request and may grant a plan approval extension of up to six months. However, any extended plan approval deadline will be no later than May 1, 2005.

* * * * *

■ 4. Revise § 201.6(a)(1) to read as follows:

§ 201.6 Local Mitigation Plans.

* * * * *

(a) * * *

(1) For disasters declared on or after November 1, 2004, a local government must have a mitigation plan approved pursuant to this section in order to receive HMGP project grants.

* * * * *

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

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

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42

U.S.C. 5121–5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

■ 6. Revise § 206.226(b) to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b) *Mitigation planning.* In order to receive assistance under this section, as of November 1, 2004 (subject to 44 CFR 201.4(a)(2)), the State must have in place a FEMA approved State Mitigation Plan in accordance with 44 CFR part 201.

* * * * *

■ 7. In § 206.432, revise paragraphs (b) introductory text and (b)(1) to read as follows:

§ 206.432 Federal grant assistance.

* * * * *

(b) *Amounts of assistance.* The total of Federal assistance under this subpart shall not exceed either 7½ or 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster under 42 U.S.C. 5170b, 5172, 5173, 5174, 5177, 5178, 5183, and 5201 as follows:

(1) *Seven and one-half (7½) percent.* Effective November 1, 2004, a State with an approved Standard State Mitigation Plan, which meets the requirements outlined in 44 CFR 201.4, shall be eligible for assistance under the HMGP not to exceed 7½ percent of the total estimated Federal assistance described in this paragraph. Until that date, existing FEMA approved State Mitigation Plans will be accepted. States may request an extension to the deadline of up to six months to the Director of FEMA by providing written justification in accordance with 44 CFR 201.4(a)(2).

* * * * *

■ 8. Revise § 206.434(b)(1) to read as follows:

§ 206.434 Eligibility.

* * * * *

(b) * * *

(1) For all disasters declared on or after November 1, 2004, local and Indian tribal government applicants for project subgrants must have an approved local mitigation plan in accordance with 44 CFR 201.6 prior to receipt of HMGP subgrant funding for projects. Until November 1, 2004, local mitigation plans may be developed concurrent with the implementation of subgrants.

* * * * *

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–20609 Filed 9–10–04; 8:45 am]

BILLING CODE 9110–41–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 54

[CC Docket No. 02–6; FCC 04–190]

Schools and Libraries Universal Service Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts measures to protect against waste, fraud, and abuse in the administration of the schools and libraries universal service support mechanism (also known as the E-rate program). In particular, the Commission resolves a number of issues that have arisen from audit activities conducted as part of ongoing oversight over the administration of the universal service fund, and we address programmatic concerns raised by our Office of Inspector General.

DATES: Effective October 13, 2004 except for §§ 1.8003, 54.504(b)(2), 54.504(c)(1), 54.504(f), 54.508, and 54.516 which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Report and Order, and Order in CC Docket No. 02–6 released on August 13, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC, 20554.

I. Introduction

1. In this order, we adopt measures to protect against waste, fraud, and abuse in the administration of the schools and libraries universal service support mechanism (also known as the E-rate program). In particular, we resolve a number of issues that have arisen from audit activities conducted as part of ongoing oversight over the administration of the universal service fund, and we address programmatic concerns raised by our Office of Inspector General (OIG). First, we set forth a framework regarding what amounts should be recovered by the Universal Service Administrative Company (USAC or Administrator) and the Commission when funds have been disbursed in violation of specific statutory provisions and Commission rules. Second, we announce our policy regarding the timeframe in which USAC and the Commission will conduct audits or other investigations relating to use of E-rate funds. Third, we eliminate the current option to offset amounts disbursed in violation of the statute or a rule against other funding commitments. Fourth, we extend our red light rule previously adopted pursuant to the Debt Collection Improvement Act (DCIA) to bar beneficiaries or service providers from receiving additional benefits under the schools and libraries program if they have failed to satisfy any outstanding obligation to repay monies into the fund. Fifth, we adopt a strengthened document retention requirement to enhance our ability to conduct all necessary oversight and provide a stronger enforcement tool for detecting statutory and rule violations. Sixth, we modify our current requirements regarding the timing, content and approval of technology plans. Seventh, we amend our beneficiary certification requirements to enhance our oversight and enforcement activities. Eighth, we direct USAC to submit a plan for timely audit resolution, and we delegate authority to the Chief of the Wireline Competition Bureau to resolve audit findings. Finally, we direct USAC to submit on an annual basis a list of all USAC administrative procedures to the Wireline Competition Bureau (Bureau) for review and further action, if necessary, to ensure that such procedures effectively serve our objective of preventing waste, fraud and abuse.

II. Fifth Report and Order

2. Since the inception of the schools and libraries support mechanism, schools and libraries have been subject to audits to determine compliance with the program rules and requirements. Audits are a tool for the Commission and USAC, as directed by the