

Massachusetts is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any non-federal information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve imposing federal technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 29, 1999.

John P. DeVillars,

Regional Administrator, Region I.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC89

Disaster Assistance; Redesign of Public Assistance Program Administration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: We (FEMA) have redesigned the Public Assistance Program to provide money to applicants more quickly and to make the application process simpler than before. Specific changes to regulations rename documents, define terms, adjust responsibilities, and edit the rule in a way that we hope makes the rule easier to read and understand. This rule reflects changes that we need to put the new Public Assistance Program into effect.

EFFECTIVE DATE: This rule is effective on November 12, 1999.

FOR FURTHER INFORMATION CONTACT: James D. Duffer, Federal Emergency Management Agency, room 713, 500 C Street SW., Washington DC 20472, (202) 646-3532, or (email) james.duffer@fema.gov.

SUPPLEMENTARY INFORMATION: On November 20, 1998, we published an interim final rule on the redesigned Public Assistance Disaster Grant Program (Project Administration) in the **Federal Register** at 63 FR 64423. We invited comments for 45 days ending on January 4, 1999. We received eight sets of comments: Five from States; one from an organization; and, one from an individual. Comments varied widely. One commenter objected to changing the regulations; some thought that certain amended language required more clarification; some proposed additions to the amendatory language; and, some supported the rule as written.

We have carefully considered the comments and performed clarifying amendments to § 206.201, § 206.202, § 206.204, § 206.205, and § 206.208 that are technical in nature and do not require republication of the rule for comment. Specifically, within § 206.201 we added that a scope of work and cost estimate for a project are documented on a Project Worksheet. We amended § 206.202 to explain the State's responsibility better and to make the rule easier to understand in this regard. We replaced the term "Damage Survey Report" with "Project Worksheet" at § 206.204. In § 206.205 we amended the

section to provide that final payment of the Federal share is made to the Grantee upon approval of the Project Worksheet, rather than the project. And in § 206.208 we eliminated the damage survey report requirement for the implementation of direct Federal assistance and replaced it with a requirement for a mission assignment letter to the appropriate federal agency. Following is a summary of the comments and responses.

Several States commented that the proposed amendments to the governing regulations were generally acceptable. Some suggested that additional changes to the rule were necessary to explain the meaning of the redesigned process better for improving the delivery of the Public Assistance Program. We believe that the comments have merit and where terminologies are not consistent we are making additional changes to define terms better and to adjust responsibilities as follows:

- Several commenters noted that we might have omitted State participation in the preparation of Project Worksheets from the responsibilities of the Grantee, which could result in misinterpretations with other sections of the rule. By way of explanation, we encourage applicants to formulate their own small projects and to prepare Project Worksheets. For those unable to do so, we will prepare Project Worksheets for small projects. We also prepare Project Worksheets for all large projects. The State is responsible for providing assistance to the applicant and FEMA, as appropriate, for the purposes of identifying and validating small and large projects. We edited § 206.202(b)(2), § 206.202(d)(1)(i) and § 206.228(a)(2)(i) to explain the State's responsibility better and make the rule easier to understand in this regard.

- One commenter observed that § 206.202(d)(1)(ii) of the interim rule mistakenly omitted the word "substantive". We corrected this section to include the word "substantive" in the text of the rule. Our intent (as we noted under *What Changes Are We Making to the Rule?*) is that the first substantive meeting (known as the Kickoff Meeting) is between the applicant, the Public Assistance Coordinator (PAC) and the Liaison (a State supplied position) when possible. The PAC contacts the subgrantee to arrange the Kickoff Meeting. At this meeting a subgrantee's damages will be discussed, needs assessed, and a plan of action put in place. The PAC will go over what we expect of the subgrantee and will provide detailed instructions on what to do and how to do it. The State Liaison will discuss State requirements for administering the programmatic and

grant management requirements of the Public Assistance Program. This meeting is also the place to bring any questions or concerns that the subgrantee may have about how the public assistance process works.

- One commenter said that a change should be made to the Payment of Claims for small projects. Under the previous process for small projects, final payment of the Federal share was made to the Grantee upon project approval (each project was separately identified on a Damage Survey Report). The comment has merit because the redesigned process approves all small projects listed on a Project Worksheet as a single grant. We edited § 206.205(a) to say that we make final payment of the Federal share of these projects to the Grantee when we approve the Project Worksheet.

- Another commenter proposed a change to eliminate the term DSR under § 206.208(c)(1), Direct Federal Assistance. In the past, the Regional Director had to prepare a damage survey report establishing the scope and estimated cost of eligible work before execution of the work by another Federal agency that had the mission assignment to provide direct Federal assistance. This requirement was a pre-Federal Response Plan activity. We edited this section to eliminate the DSR requirement. However, the mission assignment letter to the agency providing direct Federal assistance will define the eligible scope of work, the estimated cost of the eligible work and the billing frequency.

- Another commenter observed for § 206.204(e) that we needed to eliminate the term DSR (Damage Survey Report) and replace it with PW (Project Worksheet). We made that change.

We also received comments that were unrelated to matters of terminology or consistency in the interim rule. Following is our summary of and response to these comments:

- A commenter observed that the grantee and subgrantee must be trained before a disaster and that we should provide adequate funding for training and publications to implement the Public Assistance Program properly. In response, our priority is to train FEMA staff to better deliver the redesigned Public Assistance Program. Although we do not propose a formal training program for States and applicants, we are providing educational and training materials in a variety of forms and delivery methods to educate States and applicants. To prepare States to train applicants we have provided limited training to the States (e.g. train-the-trainer classes). We are relying on States

and locals to avail themselves of the training materials mounted on our web site that includes clearly marked areas for Public Assistance Program information and publications.

- One commenter expressed that there could be confusion with the terms “we” and “you” as used throughout the text of the proposed language. We have considered the possibility and agree. To reduce the potential for confusion, terminology changes throughout text of the proposed language have been made to reflect the term’s “Grantee” and “subgrantee” as appropriate.

- Another commenter noted that allowable administrative costs for subgrantees are insufficient to complete program responsibilities and said the allowance should be increased. The statutory allowance to assist in the cost of requesting, obtaining and administering Federal assistance is outside the scope of the changes to the regulations.

- A commenter asserted that FEMA should retain the requirement to explain in writing to a State Program Administrator any delays beyond 45 days in the obligation of Federal funds. We appreciate the comment but we do not take that view. We keep our obligation to explain delays but remove the requirement for written explanation. The program relies greatly on open communication, which we effect in a variety of ways. For instance, soon after the declaration, FEMA and State officials will meet to develop a public assistance recovery strategy, which will address FEMA and State staffing plans. As other examples, State staff assigned to the Resource Pool may assist in recovery efforts by providing technical assistance to applicants requesting assistance with their small project formulation activities, by validating an applicant’s small projects, by assisting in the formulation of large projects, or by reviewing an applicant’s case management file. Through the Federal, State and local partnership all participants will know why delays greater than 45 days in obligating Federal funds may occur both through open communication and through the review of an applicant’s case management file. We believe that it would be redundant to duplicate this information in writing separately, when the same information is available from either the Public Assistance Coordinator (PAC), the State Liaison, or an applicant’s case management file.

- Another commenter observed that we had deleted § 206.202(f). We appreciate the comment and note that the final rule retains that section in its original form.

- A commenter stated that the redesigned Public Assistance Program should not be implemented until we closed out one of the “pilot” disasters and audited the program result. We appreciate the comment but we do not take that view. State and local officials who participated in the pilot enthusiastically endorsed the redesigned process. Changes to the regulations incorporate the lessons that we learned from the pilot. The evaluation of program performance is an essential part of the redesigned program. An overall survey program began in late 1997 specifically for this purpose. We conducted an initial survey, *Public Assistance Program Evaluation and Customer Satisfaction Baseline Survey*, from December 1997 through February 1998 and we published results of the survey in April 1998. The Baseline Survey revealed that, while a majority of respondents were satisfied with the overall Public Assistance (PA) Program and its major components, customer satisfaction levels were below our performance expectations. In response, our headquarters and regional staffs designed performance standards and targets for the PA Program to make the Program a more customer-responsive and performance-based operation. We published the standards in June 1998 in *Public Assistance Program Performance Standards*. We are now conducting a series of Post-Disaster Surveys to evaluate the effectiveness of new processes for the delivery of financial assistance and services to customers.

- Another commenter observed that § 206.228(a)(2)(i)(A–D) had been left out of the November 20, 1998 **Federal Register** notice. We appreciate the comment and when we found the error we published a correction in the **Federal Register**, 64 FR 41827, August 2, 1999, to ensure that we retain the subparagraphs. They are in the final rule.

- A commenter expressed the desire to have **Federal Register** notices appear on the FEMA Website. We believe the comment has merit and have asked our Office of the General Counsel to post all FEMA-generated **Federal Register** publications on the FEMA Website.

National Environmental Policy Act

Our regulations categorically exclude this rule from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. We have not prepared an environmental assessment or an environmental impact statement.

Executive Order 12866, Regulatory Planning and Review

We do not expect this rule (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities.

As Director I certify that this rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and that it attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this rule under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

In publishing this rule, we considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures under 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. We have not prepared a Federalism assessment.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

Congressional Review of Agency Rulemaking

We have submitted this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and 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 exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not meet the \$100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance.

Accordingly, the interim rule published at 63 FR 64425, Nov. 20, 1998, amending 44 CFR part 206 is adopted as final with the following changes:

PART 206—DISASTER ASSISTANCE

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

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; 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 § 206.200(b) to read as follows:

§ 206.200 General.

* * * * *

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

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

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

(ii) Pay the full amounts due to subgrantees as soon as practicable after we approve payment, including the

State contribution required in the FEMA-State Agreement; and

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

3. Amend section § 206.201 by revising the heading and the definitions of *project* and *project approval* in paragraphs (i) and (j) to read as follows:

§ 206.201 Definitions used in this subpart.

* * * * *

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

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

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

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

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4. Revise § 206.202 to read as follows:

§ 206.202 Application procedures.

(a) *General.* This section describes the policies and procedures that we use to process public assistance grants to States. Under this section the State is the Grantee. As Grantee you are responsible for processing subgrants to applicants under 44 CFR parts 13, 14, and 206, and your own policies and procedures.

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

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

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

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

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

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

(d) *Project Worksheets.* (1) An applicant's authorized local

representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs for disaster-related damages for funding.

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

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

(2) When the estimated cost of work on a project is less than \$1,000, that work is not eligible and we will not approve a Project Worksheet for the project. Periodically we will review this minimum approval amount for a Project Worksheet and, if needed, will adjust the amount by regulation.

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

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

(f) *Exceptions.* The following are exceptions to the procedures and time limitations outlined in paragraphs (c), (d), and (e) of this section.

(1) *Grant applications.* An Indian tribe or authorized tribal organization may submit a SF 424 directly to the RD when the Act authorizes assistance and a State is legally unable to assume the responsibilities that these regulations prescribe.

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

5. Amend § 206.204 by revising paragraph (e) to read as follows:

§ 206.204 Project performance.

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

(i) Variations in unit prices;
(ii) Change in the scope of eligible work; or

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

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

* * * * *

6. Amend § 206.205 by revising paragraph (a) to read as follows:

§ 206.205 Payment of Claims.

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

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7. Amend § 206.208 by revising paragraph (c)(1) to read as follows:

§ 206.208 Direct Federal Assistance.

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(c) *Implementation.* (1) If the RD approves the request, a mission

assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the RD.

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8. Amend § 206.228 by revising paragraph (a)(2)(i) to read as follows:

§ 206.228 Allowable costs.

* * * * *

(a) * * *

(1) * * *

(2) *Statutory Administrative Costs—(i) Grantee.* Under section 406(f)(2) of the Stafford Act, we will pay you, the State, an allowance to cover the extraordinary costs that you incur to formulate Project Worksheets for small and large projects, to validate small projects, to prepare final inspection reports, project applications, final audits, and to make related field inspections by State employees. Eligible costs include overtime pay and per diem and travel expenses, but do not include regular time for your State employees. The allowance to the State will be based on the following percentages of the total amount of Federal assistance that we provide for all subgrantees in the State under sections 403, 406, 407, 502, and 503 of the Act:

(A) For the first \$100,000 of total assistance provided (Federal share), three percent of such assistance.

(B) For the next \$900,000, two percent of such assistance.

(C) For the next \$4,000,000, one percent of such assistance.

(D) For assistance over \$5,000,000, one-half percent of such assistance.

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Dated: October 1, 1999.

James L. Witt,

Director.

[FR Doc. 99-26352 Filed 10-8-99; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[GC Docket No. 96-55; FCC 99-262]

Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission

AGENCY: Federal Communications Commission.

ACTION: Final rule.