Mitigation Plan Review

reference manual

Emergency Management Institute
Course Code: E-293

FEMA

National Emergency Training Center, Emmitsburg, Maryland

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Mitigation Plan Review

National Emergency Training Center
Emergency Management Institute

Course E293

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Unit 1: Course Introduction

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Intent of this training

Training conducted with FEMA Region staff is intended to:

Expand cadre of FEMA plan reviewers *in anticipation of a substantial influx of local hazard mitigation plans;*

Develop consistent interpretations of what can be required of communities *regarding mitigation planning requirements per the Disaster Mitigation Act of 2000, aka DMA 2000; and*

Identify ways to help communities improve planning capabilities and results *for current and future mitigation planning efforts.*

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DMA 2000 "fun facts"

General Information

The Disaster Mitigation Act of 2000 (DMA 2000)
was signed by the President (Public Law 106-390) on October 30, 2000; and
was intended to facilitate cooperation between state and local authorities across a broad spectrum of mitigation activities.

Section 322 of the Act specifically:
addresses mitigation planning at the state and local levels;
reinforces the importance of pre-disaster mitigation planning; and
promotes sustainability as a strategy for disaster resistance.

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DMA 2000 "fun facts"

General Information

Commonly accepted emergency management terminology defines the phrase "pre-disaster mitigation planning" as …

… "coordination of actions taken prior to a hazard event to reduce injuries, deaths, property damage, economic losses, and degradation of natural resources during and following natural or manmade hazard events".

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DMA 2000 "fun facts"

General Information

Recommendations resulting from DMA 2000 compliant pre-disaster mitigation planning are typically focused on:

physical projects that reduce risk from natural hazards;
changes in land development regulations such as zoning and building codes;
public education programs; and
addressing information and data deficiencies needed to develop the plans.

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DMA 2000 "fun facts"

General Information

To implement the DMA 2000 requirements, FEMA prepared an Interim Final Rule (aka "the Rule"), published in the Federal Register on February 26, 2002 (at 44 CFR Parts 201 and 206), which established planning and funding criteria for states, tribes, and local governments.

The Interim Final Rule will eventually be amended as a Final Rule but that work will not begin until after November 1, 2004.

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DMA 2000 "fun facts"

General Information

Guidance created by FEMA HQ (e.g., Multi-hazard Mitigation Planning Guidance, the State and Local Mitigation Planning How-to Guides, etc.) provides meaningful background and clarification regarding the intent of and methodology to meet the requirements of the Rule.

But, the Rule is THE Rule.

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DMA 2000 "fun facts"

State Hazard Mitigation Planning

DMA 2000 established a pre-disaster mitigation program and required that a FEMA approved standard state hazard mitigation plan be in place by November 1, 2004 …

… for a state to continue to be eligible to receive Hazard Mitigation Grant Program (HMGP) funding or Public Assistance (PA) under the recovery categories of the Stafford Act for disasters declared after November 1, 2004.

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DMA 2000 "fun facts"

State Hazard Mitigation Planning

DMA 2000 also identifies new requirements that allow HMGP funds to be used for planning activities and increases the amount of HMGP funds available to states that have developed and received FEMA approval of a comprehensive enhanced state hazard mitigation plan prior to the declaration of a disaster …

… from a maximum of 7½ percent up to a maximum of 20 percent of the total disaster declaration funding.

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DMA 2000 “fun facts”

State Hazard Mitigation Planning

State governments have certain responsibilities for implementing Section 322 via activities at the state level including:

preparing and submitting a “standard plan” (preparing and submitting an “enhanced plan” is an option); and

reviewing and updating the state mitigation plan every three years.

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DMA 2000 “fun facts”

State Hazard Mitigation Planning

State governments also have responsibilities under Section 322, for supporting activities at the local level including:

providing technical assistance and training to local governments to assist them in applying for HMGP grants; and

supporting the development of local hazard mitigation plans.

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DMA 2000 "fun facts"

Local Hazard Mitigation Planning

DMA 2000 also required that individual communities have an approved local hazard mitigation plan in place …

… to be eligible for project grants under HMGP for disasters declared after November 1, 2004 and other grant programs such as the Pre-Disaster Mitigation Program (PDM).

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DMA 2000 "fun facts"

Local Hazard Mitigation Planning

"Communities" as defined in DMA 2000 local mitigation plan requirements typically include counties, local municipalities and tribal governments (✶) …

… but can also include other local agencies and organizations (school systems, transportation authorities, public utilities, etc.)…

… that can participate as a subapplicant or subgrantee to their respective states.

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DMA 2000 “fun facts”

Local Hazard Mitigation Planning

A local mitigation plan can apply to:

*a **single jurisdiction**; or*

***multiple jurisdictions** within a county, watershed, regional planning district (e.g., multi-county plans), etc. as long as each jurisdiction participated in the planning process. These plans are referred to as “multi-jurisdictional” pre-disaster mitigation plans.*

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DMA 2000 “fun facts”

Local Hazard Mitigation Planning

Local governments have certain responsibilities for implementing Section 322, including:

preparing and submitting a local plan;

monitoring projects; and

reviewing and updating the mitigation plan every five years.

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DMA 2000 "fun facts"

Tribal Hazard Mitigation Planning

Tribal governments have similar responsibilities for implementing Section 322, but have the option of submitting their tribal hazard mitigation plan as:

*a **state enhanced** hazard mitigation plan;*

*a **state standard** hazard mitigation plan*

*a **local** hazard mitigation plan; or*

***all of the above**.*

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Approach to the reviews

The plan review process is structured to provide:

1. ***Consistent interpretations of the relevant regulations*** *i.e., the Rule (see full copy in Unit 1 of the Reference Manual) …*

   *… focusing primarily on a **quantitative** review of local hazard mitigation plans (see discussion of **Required Revisions**).*

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Approach to the reviews

The plan review process is structured to provide:

2. ***Meaningful guidance for planners and their respective communities*** *to not only meet the minimum regulatory requirements but realize maximum reduction of risks from natural hazards …*

   … covering the ***qualitative*** *aspects of plan reviews (see discussion of* ***Recommended Revisions****).*

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Roles and Responsibilities

FEMA Headquarters (aka FEMA HQ) *– Development and implementation of the DMA 2000 via the Rule via the FEMA Regional Offices*

FEMA Region Offices *– 10 autonomous offices covering all states and territories of the United States with specific responsibility for review and approval of state, tribal and local DMA 2000 hazard mitigation plans*

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Roles and Responsibilities

State Hazard Mitigation Offices *– Responsible for:*

- *development of a state-wide hazard mitigation plan;*
- *support for tribal and local planning efforts;*
- *preliminary reviews of tribal and local DMA 2000 hazard mitigation plans (in some FEMA Regions); and*
- *review and approval of tribal and local DMA 2000 hazard mitigation plans once "managing state" status is attained*

Individual Communities *– Development of single or multi-jurisdictional DMA 2000 hazard mitigation plans*

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Roles and Responsibilities

URS *– On-call technical support to FEMA Regional Offices under the Hazard Mitigation Technical Assistance Program IDIQ contract for plan reviews and at times to states and individual communities for plan development (but under the ultimate supervision and direction of FEMA HQ)*

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Plan Review Terminology

Crosswalk – The *Local Hazard Mitigation Plan Review Crosswalk* (as revised in March 2004) developed from the *Rule* and listing all the *Requirements* / *Elements* that *shall / should* be included in the plan (see the Crosswalk section of the Reference Manual)

Requirements – Wording quoted directly from the *Rule,* all of which must be successfully addressed for the *Plan* to be approved

Elements – Questions that break down the *Requirements* into component parts, all of which must be successfully addressed in the plan for the *Requirement* to be approved

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Plan Review Terminology

Shall – Rule *Requirements* that must be addressed in the plan. Revisions that are indicated for *Elements* under these *Requirements* are considered as ***Required Revisions***

Must = *Shall (!)*

Should – Rule *Requirements* that are encouraged to be addressed in the plan but not mandatory for approval. Revisions that are indicated for *Elements* under these *Requirements* are considered as ***Recommended Revisions***

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Local Plan Review Procedures

DMA 2000 Local Plan Review Background Information

Page 1 of the *Crosswalk* should be completed to the best of your ability with information provided in the plan or obtained from the community or State (including NFIP Participation information at the bottom of page 1).

Each Region may have their own way for adding names, titles and dates in the middle of page 1 and those preferences should be provided to the reviewer prior to beginning the review.

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Local Plan Review Procedures

DMA 2000 Local Plan Review

Then, starting on Page 3 of the *Crosswalk*, skim through the whole plan (or one of the major divisions of the plan – i.e., Prerequisite(s) / Planning Process / Risk Assessment / Mitigation Strategies / Plan Maintenance Process) to quickly determine if the *Elements* listed in the *Crosswalk* are addressed or included in some way in the document.

As you go through this first pass at reading the plan, complete the second column ("Location in the Plan") of the *Crosswalk* for each *Element / Requirement* so you can easily find it again.

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Local Plan Review Procedures

DMA 2000 Local Plan Review (continued)

Next, go back and determine if the passage(s) you located in your first pass through the plan fully addresses the questions posed under each *Element* while avoiding the "(e.g., …) trap".

If the answer is ***yes***, score that *Element* with an 'S' for *Satisfactory* (or *Met* for the *Prerequisites*). To the extent practical, you can add comments regarding how you felt the plan met each individual *Element* receiving a 'S' score.

See the example at the bottom of instructions page for the *Crosswalk* in the Reference Manual.

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Local Plan Review Procedures

DMA 2000 Local Plan Review (continued)

If the answer is ***no***, score that *Element* with an 'N' for *Needs Improvement* (or *Not Met* for the *Prerequisites*). For each 'N' score, you must (shall!) provide comment(s). Comments need to provide clear guidance to communities regarding the specific improvements they need to make to their plans. This may be the only avenue available for you to communicate with the communities.

We recommend that you first provide a brief summary of what you feel the deficiency is and then provide a succinct description of what revisions are needed to bring this *Element* into compliance.

See the example at the bottom of the instructions page for the *Crosswalk* in the Reference Manual.

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Local Plan Review Procedures

DMA 2000 Local Plan Review (continued)

Resources that are available to plan reviewers that can be referred to when providing comments to communities include:

Multi-hazard Mitigation Planning Guidance (and/or the *Interim Criteria* – see "FEMA DMA Mitigation Planning Guidance Fact Sheet in the Reference Manual); and

State and Local Mitigation Planning How-to Guides.

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Local Plan Review Procedures

DMA 2000 Local Plan Review (continued)

The Reference Manual includes a version of the *Crosswalk* with **sample language** for required and recommended revisions that can be used for this purpose (and is available in MSWord format).

The *Crosswalk* also includes a series of **matrices** (starting on page 11) that will help with reviewing plans that cover multiple hazards.

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Local Plan Review Procedures

DMA 2000 Local Plan Review (continued)

For "*shall*" Elements, the revisions are listed as either ***Required*** or ***Recommended Revisions***.

For "*should*" Elements, the revisions are only listed as ***Recommended Revisions***.

In all cases, it is encouraged to provide recommendations and suggestions for how to improve the plan and/or subsequent updates beyond the minimum standards. However, this type of comment needs to be always clearly identified as *Recommended Revisions*.

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Local Plan Review Procedures

DMA 2000 Local Plan Review (continued)

For each *Requirement*, determine if any of the *Elements* received an 'N' score. If so, the *Requirement* also receives an 'N' which is indicated in the Summary Score box at the end of each *Requirement* and also on Page 2 of the *Crosswalk*.

For the plan to be approved, all of the *Requirements* must be either *Met* or 'S' (with the exception of the three "*should*" *Requirements* indicated in gray shading under *Risk Assessment)*.

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General Information

- The Disaster Mitigation Act of 2000 (DMA 2000) was signed by the President (Public Law 106-390) on October 30, 2000 and was intended to facilitate cooperation between state and local authorities. Section 322 of the Act specifically addresses mitigation planning at the state and local levels; reinforces the importance of pre-disaster mitigation planning; and promotes sustainability as a strategy for disaster resistance.

  Note: In the specific context of this Act and generally accepted emergency management terminology, the phrase "pre-disaster mitigation planning" is defined as the "coordination of actions taken prior to a hazard event to reduce injuries, deaths, property damage, economic losses, and degradation of natural resources during and following natural or manmade hazard events". Recommendations resulting from pre-disaster mitigation planning are typically focused on physical projects that reduce risk from specific hazards but can also include changes in land development regulations such as zoning and building codes as well as public education programs.

- To implement the DMA 2000 requirements, FEMA prepared an Interim Final Rule, published in the Federal Register on February 26, 2002 (at 44 CFR Parts 201 and 206), which established planning and funding criteria for states, tribes, and local governments.

State Hazard Mitigation Planning

- DMA 2000 established a pre-disaster mitigation program and required that a FEMA approved ***standard state hazard mitigation plan*** be in place by November 1, 2004 for a state to continue to be eligible to receive Hazard Mitigation Grant Program (HMGP) funding or Public Assistance (PA) under the recovery categories of the Stafford Act for disasters declared after November 1, 2004.
- DMA 2000 also identifies new requirements that allow HMGP funds to be used for planning activities and increases the amount of HMGP funds available to states that have developed and received FEMA approval of a comprehensive ***enhanced state hazard mitigation plan*** prior to the declaration of a disaster from a maximum of 7½ percent up to a maximum of 20 percent of the total disaster declaration funding.
- State governments have certain responsibilities for implementing Section 322, including:
  - preparing and submitting a "standard plan" (preparing and submitting an "enhanced plan" is an option);
  - reviewing and updating the state mitigation plan every three years;
  - providing technical assistance and training to local governments to assist them in applying for HMGP grants; and
  - supporting the development of local hazard mitigation plans.

Local Hazard Mitigation Planning

- DMA 2000 also required that individual communities have an approved ***local hazard mitigation plan*** in place to be eligible for project grants under HMGP for disasters declared after November 1, 2004 and other grant programs such as the Pre-Disaster Mitigation Program (PDM).
- "Communities" as defined in DMA 2000 local mitigation plan requirements typically include counties, local municipalities and tribal governments, but can also include other local agencies and organizations (school systems, transportation authorities, public utilities, etc.) that can participate as a subapplicant or subgrantee to their respective states.
- A local mitigation plan can apply to a single jurisdiction or multiple jurisdictions within a county, watershed, regional planning district, etc. as long as each jurisdiction participated in the planning process. These plans are referred to as "multi-jurisdictional" pre-disaster mitigation plans.
- Local governments have certain responsibilities for implementing Section 322, including:
  - preparing and submitting a local plan;
  - monitoring projects; and
  - reviewing and updating the mitigation plan every five years.

Terminology

- *Crosswalk* – The *Local Hazard Mitigation Plan Review Crosswalk* developed from the *Rule* and listing all the requirements/elements that *shall/should* be included the plan.
- *Requirements* – Wording quoted directly from the *Rule,* all of which must be successfully addressed for the *Plan* to be approved.
- *Elements* – Questions that break down the *Requirements* into component parts, all of which must be successfully addressed in the plan for the *Requirement* to be approved.
- *Shall* – Rule *Requirements* that must be addressed in the plan. Revisions that are indicated for these items are considered as *Required Revisions*.
- *Must* = *Shall*
- *Should* – Rule *Requirements* that are encouraged to be addressed in the plan but not required. Revisions that are indicated for these items are considered as *Recommended Revisions*.

DMA 2000 Local Plan Review

1. Page 1 of the *Crosswalk* should be completed to the best of your ability with information provided in the plan or obtained from the community or State (including NFIP Participation information on page 1). Each Region may have their own ways for adding names, titles and dates in the middle of page 1 so check with the responsible party.
2. Starting on Page 3 of the *Crosswalk,* skim through the whole plan (or one of the major divisions of the plan – i.e., Prerequisite(s) / Planning Process / Risk Assessment / Mitigation Strategies / Plan Maintenance Process) to quickly determine if the *Elements* listed in the *Crosswalk* are addressed or included in some way in the document. As you go through this first pass at reading the plan, you should complete the second column ("Location in the Plan") of the *Crosswalk* for each *Element / Requirement* so you can easily find it again.
3. Next, go back and determine if the passage(s) you located in your first pass through the plan fully addresses the questions posed under each *Element*.
4. If the answer is **yes**, score that element with an 'S' for *Satisfactory* (or *Met* for the Prerequisites). To the extent practical, you can add comments regarding how you felt the plan met each individual element receiving a 'S' score (see the example at the bottom of the instructions page for the *Crosswalk* in the *Reference Manual*).
5. If the answer is **no**, score that element with an 'N' for *Needs Improvement* (or *Not Met* for the Prerequisites). For each 'N' score, you must (shall!) provide comment(s). comments need to provide clear guidance to communities regarding the specific improvements they need to make to their plans. We recommend that you first provide a brief summary of what you feel the deficiency is and then provide a succinct description of what revisions are needed to bring this element into compliance. See the example at the bottom of the instructions page for the *Crosswalk* in the *Reference Manual*.
6. For "*shall*" items, the revisions are listed as either *Required or Recommended Revisions*. For "*should*" items, the revisions can only be listed as *Recommended Revisions*.
7. In all cases, it is encouraged to provide recommendations and suggestions for how to improve the plan and/or subsequent updates. However, this type of comment needs to be always clearly identified as *Recommended Revisions*.
8. For each *Requirement*, determine if any of the *Elements* received an 'N' score. If so, the *Requirement* also receives an 'N' which is indicated in the Summary Score box at the end of each *Requirement* and also on Page 2 of the *Crosswalk*.
9. For the plan to be approved, all of the *Requirements* must be either *Met* or 'S' (with the exception of the three "*should*" *Requirements* indicated in gray shading under *Risk Assessment*.

Disaster Mitigation Act of 2000	
	Disaster Mitigation Act of 2000 (Public Law 106-390) *Interim Final Rule* (44 CFR Part 201) *Multi-Hazard Mitigation Planning Guidance* (formerly known as Interim Guidance))
Hazard Identification and Risk Assessment	
	Multi-Hazard Identification and Risk Assessment (http://www.fema.gov/fhm/ft_mhira.shtm)
Natural and ManMade Hazard Mitigation Planning	
	State and Local Mitigation Planning How to Guides: ✓ *Getting Started* (FEMA 386-1) ✓ *Understanding Your Risks* (FEMA 386-2) ✓ *Developing the Mitigation Plan* (FEMA 386-3) ✓ *Bringing the Plan to Life* (FEMA 386-4) ✓ *Integrating ManMade Hazards with Mitigation Planning* (FEMA 386-7) (http://www.fema.gov/fima/planhowto.shtm)

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.

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BILLING CODE 6718–05–P

To improve the guidance available to States, local jurisdictions, and Tribal governments on the "bottom line" with respect to FEMA approval of the multi-hazard mitigation plans required under the Disaster Mitigation Act of 2000 (DMA 2000), as the November 1, 2004 deadline approaches, FEMA has revised the July 2002 guidance document, *Interim Criteria for Mitigation planning under DMA 2000*. We want to stress, however, that the **Interim Final Rule requirements for State and local mitigation plans remain unchanged**.

The updated *Multi-Hazard Mitigation Planning Guidance*, dated March 2004, incorporates feedback and addresses issues that State and local officials and FEMA staff discussed at the Mitigation Planning Workshops FEMA regional offices held during the spring of 2002 and 2003.

The updated *Planning Guidance* **does**:

- ✓ Clarify the distinction between the "shoulds" (recommended to be in the plans) and "shalls" (required to be in the plans), and corrects the few discrepancies that were found in the July 2002 guidance relative to the Interim Final Rule,
- ✓ Improve explanations of the plan requirements,
- ✓ Improve the sample plan text to illustrate distinctions between plan approaches that would and would not meet DMA 2000 requirements,
- ✓ Revise some of the "reviewer's comments" on the sample plan text to track more closely with the rule requirements, and
- ✓ Reformat the Plan Review Crosswalks (Standard State, Enhanced State, and Local) by breaking the requirements into elements where appropriate, to help plan writers and reviewers ensure that plans include the necessary information.

The updated *Planning Guidance* **does not**:

- ✘ Change the requirements of the Interim Final Rule
- ✘ Establish new or additional planning requirements, or
- ✘ Necessitate a change in approach for planning currently underway, or for plans already approved.

The Multi-Hazard Mitigation Planning Guidance is being posted at www.fema.gov/fima/planning. For more information, please contact your FEMA regional office.

Comprehensive List of Frequently Asked Questions (FAQ's)

March 18, 2003

Question 1: Are HMGP planning grants subject to a benefit-cost analysis in order to be eligible for funding?

Answer: The Disaster Mitigation Act of 2000 authorizes up to 7% of the HMGP ceiling to be used for the development of State, Indian Tribal, and/or local mitigation plans that meet the planning criteria outlined in 44 CFR Part 201. A benefit-cost analysis is not required for the use of the 7% planning funds.

Question 2: Are annual EMPG funds contingent upon a State meeting the Section 322 planning requirements?

Answer: No, EMPG funding will not be withheld from a State that does not update its mitigation plan in compliance with 44 CFR Part 201. However, FEMA does emphasize the need to encourage planning assistance and training with the EMPG funds. A State may choose to use the funding they receive under the EMPG to develop specific pieces of their plan as they relate to all hazards.

Question 3: What should be the role of private nonprofit organizations in the development, review, and approval of local mitigation plans?

Answer: Private nonprofit organizations, especially those that may be eligible applicants for mitigation projects, should participate in the development of the local mitigation plan. If they have fully participated in the development and review of the local plan, it is not necessary for them to approve/adopt the plan, as long as it is adopted by the local jurisdiction. Note: the issues related to private nonprofits that cover a wide geographic area, such as rural electric cooperatives or levee districts, will be addressed in a separate FAQ.

Question 4: Are separate plans required from State agencies when they are subgrantees to the State agency serving as the grantee to FEMA?

Answer: Not usually. State agency issues should be addressed in the State Mitigation Plan, and potential projects or funded activities should be included in the plan. The State has two options for addressing other State agency mitigation issues in a plan. The preferred option is to ensure participation in the State mitigation planning process by requiring each participating agency to sign-off on the State Mitigation Plan as a condition of mitigation project grant funding. State agencies should identify issues of particular interest to them, summarizing any specific projects, activities, or mitigation commitments in a brief document that can be an addendum to the State Mitigation Plan. The second option is: if agencies do not participate in the Statewide planning process, then they must prepare a separate plan in order to be eligible for mitigation project grant funding.

Question 5: What is the policy to prevent a conflict of interest when a contractor has the potential to be involved in the preparation of a mitigation plan and that same company is used to assist FEMA in plan reviews?

Answer: If the contractor has been involved at all in the preparation of a plan, or any portion of the plan, they will not be able to participate in the plan review. This does not apply to general data collection that may be generated as part of post-disaster recovery activities.

Question 6: The planning criteria outlined in 44 CFR Part 201 discuss the development of countywide or multi-jurisdictional plans (which must be adopted by all jurisdictions included), since many issues are better resolved by evaluating hazards in a more comprehensive fashion. If a jurisdiction within the boundaries of a multi-jurisdictional planning area does not participate in the planning process and/or does not formally adopt the plan, what are the implications to the other participating jurisdictions within that multi-jurisdictional plan?

Answer: When a multi-jurisdictional plan is prepared, any participating entity/jurisdiction must adopt the plan if they wish to be eligible for future project grant funding from FEMA. If they do not want to sign off on the plan, that will not prevent any of the other jurisdictions from approving the plan and being eligible for project grants. For instance, if there was a countywide plan, and town A did not adopt the plan, but the county and other towns/cities did adopt it, the only one adversely affected would be town A. We expect, however, that the multi-jurisdictional plan would address any issues that crossed over jurisdictional lines to as great a degree as possible.

Benefit-Cost Analysis for Projects

Question 7: What level of detail should be provided in mitigation plans with respect to benefit-cost calculations for projects?

Answer: According to DMA interim final regulations [44 CFR §201.6(c)(3)(iii)] local mitigation plans must contain a strategy (or action plan) whereby "Prioritization shall include a special emphasis on the extent to which benefits are maximized according to a benefit-cost review of the proposed projects and their associated costs."

This is not intended to require a full-blown benefit-cost calculation for inclusion within the plan document. However, one key aspect of the many considerations in deciding what type of mitigation action(s) to pursue is an economic assessment of the particular action. This (and the other considerations) should be debated and discussed as part of the planning team's and/or larger community's decision-making process. A possible result of these local discussions *could* be the decision to complete a formal benefit-cost evaluation of the various mitigation approaches that are technically appropriate for the situation. However, this is not required to be included in the plan. As long as the economic considerations are summarized in the plan document as part of the community's analysis of the "comprehensive range of specific mitigation actions of projects being considered…" [44 CFR §201.6(c)(3)(ii)], that would be sufficient.

Once funding is being sought for the particular mitigation action, the detailed benefit-cost calculation would be required, as described under the various grant program regulations.

Demonstration of Effective Program Management

Question 8: What is the length of time necessary for a State to demonstrate a track record of effective program management? (Enhanced Plan requirement)

Answer: A State must show one year (4 quarters) of demonstrated effective program management. This demonstration will be between the FEMA Regional Office and the State to determine. Examples of effective program management include, but are not limited to: meeting grant application time frames with complete, technically feasible, and eligible project applications; preparing and submitting accurate environmental reviews and benefit-cost analyses and timely submission of quarterly financial and progress reports; demonstrated work-in-progress throughout the period of performance; and completed closeout of grants within 90 days of end of performance periods.

Level of Detail for Risk Assessments

Question 9: What level of detail is necessary for a Risk Assessment?

Answer: The short answer to this question is: "It depends."

As stated in 44 CFR §201.6(c)(2), the risk assessment should provide enough information to enable the jurisdiction to identify and prioritize appropriate mitigation actions. The risk assessment must include a description of the vulnerability that includes the potential impact of each hazard on the community. This type of information can be portrayed in many ways, but must be based on **best available data**. The following provides examples of the variety of ways vulnerability can be depicted; each of the examples below could meet DMA criteria if it is determined that the approaches and data used represent the community's best-faith efforts to obtain the most recent, accurate data available.

Communities A, B, and C each contain 5,000 households and 100 businesses (based on Census data and the local community plan). The communities each have a 100-year floodplain running through them, but there is no detailed information as to how many buildings lie in the floodplain, nor is there detailed information on what the depth of the 100-year flood would be at the buildings. The communities can demonstrate their vulnerability in the following ways:

Scenario 1: Community A's planning team obtains the tax maps (containing parcel-level information) for the community and transfers the FIRM boundaries onto it. It then counts the number of homes and businesses within the floodway and floodplain boundaries. The planning team determines that there are 500 households and 28 businesses within the floodplain, 100 of which are within the floodway. The planning team obtains the backup information from the FIRM used by the study contractor that performed their currently effective Flood Insurance Study. They then determine that the average 100-year flood depth in the floodway is 9 feet, and the average 100-year floodplain depth is 6 feet. They also determine that there are areas of high flow velocity in certain reaches of the stream, indicating that localized erosion may be a problem.

Scenario 2: Community B does not have detailed flood mapping; they have flood boundary information. The planning team estimates that, based upon the density and pattern of development in the community, approximately 15% of the housing and 20% of the businesses in the community lie in the 100-year floodplain. This is estimated visually by transferring the FIRM boundaries onto a land use map previously developed by the planning department. By multiplication, they determine that approximately 750 homes and 20 businesses are in the floodplain. The team then takes a USGS quadrangle map and estimates the average ground elevations within the floodway, and within the floodplain, and compares them with the average base flood elevation obtained from the FIRM. They determine that the average depth in the floodplain is 5 feet.

As the vulnerability assessment is completed, it is noted that given the zoning designation of currently vacant land within the floodplain, there is the potential for an additional 100 houses to be built in the floodplain. This is brought to the attention of the planning director.

Scenario 3: Community C works with the local university to have students do a "windshield survey" of the homes and businesses located in the floodplain. The students first obtain Q3 flood boundaries from www.hazardmaps.gov, and transfer them onto a new street map. They then use an old tax map to begin counting structures within the flood boundaries. Lastly, they take to the streets to visually count the number of homes and businesses that likely lie within the flood boundaries delineated on their street map. They determine there are 425 homes and 22 businesses within the flood boundaries.

In the examples above, each community arrived at the number of structures within the floodplain in a different manner, using the best data available to them, and using methods that matched the resources of the community. None of these communities used GIS, a tool often used in risk assessment activities.

Environmental Assessment and Data Collection Requirements

Question 10: Do the States have to prepare environmental assessments and collect data?

Answer: The regulations for enhanced plans at 201.5(b)(2)(iii) require "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…(B) Preparing and submitting accurate environmental reviews…."

The States **are not** required to prepare the formal environmental documents, but FEMA **does expect** them to perform much of the **data gathering and coordination** necessary to support the environmental review process.

FEMA's environmental regulations at **44 CFR Part 10.7** discuss FEMA's overall approach to integrating National Environmental Policy Act (NEPA) considerations with mitigation planning and project development. Paragraph 10.7(a) directs the FEMA Regional Director to "integrate the NEPA process with other planning at the earliest possible time to ensure that planning decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts."

To facilitate compliance with this approach, FEMA sets out its expectations for applicants for FEMA assistance, generally States, Tribal and local governments, in Paragraph 10.7(c)(2):

> *(2) To facilitate compliance with the requirements of paragraph (a) of this section, applicants and other non-federal entities are expected to:*
>
> (i) Contact the Regional Director as early as possible in the planning process for guidance on the scope and level of environmental information required to be submitted in support of their application;
>
> (ii) Conduct any studies which are deemed necessary and appropriate by FEMA to determine the impact of the proposed action on the human environment;
>
> (iii) Consult with appropriate federal, regional, State, and local agencies and other potentially interested parties during preliminary planning stages to ensure that all environmental factors are identified;
>
> (iv) Submit applications for all federal, regional, State, and local approvals as early as possible in the planning process;

(v) Notify the Regional Director as early as possible of all other federal, regional, State, local, and Indian Tribal actions required for project completion so that FEMA may coordinate all federal environmental reviews; and

(vi) Notify the Regional Director of all known parties potentially affected by or interested in the proposed action.

[45 FR 41142, June 18, 1980, as amended at 47 FR 13149, Mar. 29, 1982]

Plan Detail on Critical Facilities

Question 11: What level of detail is needed in the plan's identification of critical facilities?

Answer: The plan should provide enough information regarding critical facilities to enable the jurisdiction to identify and prioritize appropriate mitigation actions.

However, some information may be deemed as highly sensitive and should not be made available to the public. Such information that the jurisdiction considers sensitive should be treated as an addendum to the mitigation plan so that it is still a part of the plan, but access can be controlled. For more information on protecting sensitive information see How-To #7 *Integrating Human-Caused Hazards into Mitigation Planning* (FEMA 386-7).

Acquisition Project Addresses

Question 12: Are potential acquisition project property addresses required to be noted in the plan?

Answer: No. A list of potential properties or areas that are being considered for acquisition should be prepared in advance, as part of the mitigation strategy, but the specifics regarding property addresses should remain at the project level.