

## II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425 (e)(1)(i)–(iii), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with NJDEP, will consider whether any of the following criteria has been met:

(i) Responsible or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

## III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for information purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete the site. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Site:

1. NJDEP, as the lead agency, has recommended deletion.

2. EPA Region II concurred with the deletion decision and has prepared the relevant documents.

3. Concurrent with the Notice of Intent to Delete, a notice has been published in a local newspaper and has been distributed to appropriate Federal, State and local officials, and other interested parties.

The comments received during the comment period will be evaluated before any final decision is made. EPA Region II will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with the deletion, the EPA Regional

Administrator will place a Notice of Deletion in the Federal Register. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary, if any, will be made available to local residents by EPA Region II.

## IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Pijak Farm Superfund Site, Ocean County, New Jersey, from the NPL.

The Site is an 87 acre site located in Plumsted Township, Ocean County, New Jersey. Approximately 20 acres of the Site is reported to have been used from 1963 to 1970 for disposal of drummed and bulk wastes. The majority of the disposal occurred in random areas along stream valleys and wooded areas within the property.

The NJDEP conducted an initial inspection of the Site in 1980. As a result of initial investigations, EPA proposed that the Site be added to the NPL in October 1981.

A Remedial Investigation (RI) was performed from December 1983 through May 1984. The RI identified several disposal areas. The disposal areas contained discarded polymers, laboratory glassware, lab packs, drums and stained soils. Soil samples collected as part of the RI yielded various organic compounds and metals.

A Record of Decision (ROD), which selected a remedy for the Site, was signed in September 1984. The selected remedy called for the off-site disposal of waste material, drums, lab packs and contaminated soil, and ground water monitoring for a five year period. In April 1985, Morton International Incorporated entered into an enforcement agreement with NJDEP for performance of the selected remedy.

Morton began implementation of the selected remedy in May 1985. The initial phases of the remedial program included the collection of soil samples and digging of test pits in the disposal areas to further define the extent of the disposal areas. Subsequent to the off-site disposal of the waste and contaminated soil, Morton conducted soil sampling to determine whether the NJDEP-established 1 milligram per kilogram (mg/kg) cleanup criterion for polychlorinated biphenyls (PCBs) had been achieved. PCBs were detected in soil at levels exceeding the 1 mg/kg criterion, prompting further remedial action.

Removal of PCB-contaminated "hot spots" was conducted in August and September 1989 and November 1990. Removal of remaining PCB-

contaminated soil was completed during the final phase of the remedial action, which was performed in 1994. The cleanup of PCB-contaminated soil was confirmed through the collection and analysis of post-excavation soil samples. Furthermore, ground water monitoring which was conducted annually from 1989 through 1994 did not detect Site-related contaminants above criteria established for the protection of ground water.

NJDEP and EPA have determined that the remedy implemented at the Site is protective of human health and the environment and that no further cleanup by responsible parties is appropriate. Hazardous substances on Site were cleaned up to levels that would allow for unlimited use and unrestricted exposure, therefore the five-year review requirement of Section 121(c) of CERCLA, as amended, is not applicable.

Dated: September 16, 1996.  
William J. Muszynski,  
*Acting Regional Administrator.*  
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## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 206

#### RIN 3067-AC60

### Disaster Assistance; Restoration of Damaged Facilities

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would require that eligible costs associated with State and local repair or replacement standards (building codes), which change the predisaster construction of a facility, be limited to the standards that are in place at the time of the disaster declaration date. The standards must be in writing and formally adopted by the applicant or State on or before the disaster declaration date. The proposed rule would become effective for disasters declared one (1) year or more after the publication of the final rule.

**DATES:** We invite comments on this proposed rule and will accept comments until December 24, 1996.

**ADDRESSES:** Please send written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (facsimile) (202) 646-4536.

**FOR FURTHER INFORMATION CONTACT:**

Gregory Ormsby, Engineer, Federal Emergency Management Agency, room 713, 500 C Street SW., Washington, DC 20472, (202) 646-2726.

**SUPPLEMENTARY INFORMATION:**

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5121 *et seq.*, authorizes the President to provide supplemental assistance to State and local governments and certain private nonprofit organizations after the President declares a major disaster. Section 406 of the Stafford Act, "Repair, Restoration, and Replacement of Damaged Facilities," authorizes the President to fund the repair, restoration, reconstruction, or replacement of a damaged public facility or private nonprofit facility ". . . on the basis of the design of the facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards." Under authority delegated by the President to FEMA, we have interpreted the phrase, ". . . in conformity with *current* codes, specifications, and standards . . ." to mean those codes, specifications, and standards that are officially adopted and implemented before project approval, that is, the date FEMA approves the repair estimate for a specific facility. This interpretation is codified at 44 CFR 206.226(b)(3).

44 CFR 206.226(b)(3) allows applicants to incorporate new codes and standards in the eligible repair of damaged facilities as well as the construction of new facilities. Damage mitigation achieved by the new codes would lessen the impact of future disasters and reduce future Federal disaster expenditures. This change was made from pre-Stafford Act regulations to encourage adoption of codes at a time when there is a heightened awareness of the need for improved codes.

Recently, FEMA has experienced several unintended consequences of this interpretation of the law, which have had negative impacts on the program. We have experienced protracted delays in repairing eligible projects as applicants debate the adoption of codes and standards that will affect eligible damaged facilities and the amount of Federal assistance they will receive. After adopting new codes and standards, there have been protracted discussions with FEMA regarding the applicability of the new codes and standards to the damaged facilities. These actions have resulted in extensive delays in repairing damaged facilities

and subsequently in closing out disasters.

After review of the statute and a General Accounting Office (GAO) report entitled "Disaster Assistance: Improvements Needed in Determining Eligibility for Public Assistance" (GAO/RCED-96-113), which commented on this provision in the regulations, FEMA determined that its *current* interpretation is not fully consistent with Congressional intent. FEMA believes that the word "current" means *at the time of the disaster* and not at the time of project approval. This is consistent with Congressional intent.

Accordingly, FEMA proposes to revise 44 CFR 206.226 (b)(3) to reflect this revised interpretation. The proposed rule would become effective for disasters declared one year or more after publication of the final rule. During this period, applicants will be encouraged to adopt improved building codes before their next disaster. In this way, all those structures built between the adoption of a code and the next disaster will benefit from better construction and have less damage. All other provisions of 44 CFR 206.226(b) would remain unchanged.

*National Environmental Policy Act.* This proposed rule would be categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental assessment or environmental impact statement has been prepared.

*Regulatory Flexibility Act.* A regulatory impact analysis is in process to determine the effect of this rule on small communities.

*Paperwork Reduction Act.* This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

*Executive Order 12612, Federalism.* In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

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

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

Disaster assistance, Public assistance. Accordingly, 44 CFR part 206 is proposed to be amended as follows:

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

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

2. Section 206.226 (b)(3) is proposed to be revised to read as follows:

**§ 206.226 Restoration of damaged facilities.**

\* \* \* \* \*

(b)(1) \* \* \*

(2) \* \* \*

(3) Be in writing and formally adopted by the applicant or State prior to the disaster declaration date or be a legal Federal requirement applicable to the type of restoration;

\* \* \* \* \*

Dated: October 16, 1996.

James L. Witt,

Director.

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**FEDERAL MARITIME COMMISSION****46 CFR Part 552**

[Docket No. 95-15]

**Availability of the Annual Financial and Operating Statements Filed by Domestic Offshore Carriers**

**AGENCY:** Federal Maritime Commission.

**ACTION:** Proposed rule; withdrawal.

**SUMMARY:** The Federal Maritime Commission ("FMC" or "Commission") is withdrawing the proposed rule amending its regulations governing the availability of the annual financial and operating statements filed by vessel-operating common carriers by water providing port-to-port services in the domestic offshore trades, because jurisdiction over such services has been transferred to the Surface Transportation Board.

**FOR FURTHER INFORMATION CONTACT:**

Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, 202-523-5787.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W.,