

(10) Acquisition of unauthorized replacement property.

(11) Acquisition of replacement property which violates:

(i) Any restriction on procurement of a commodity or commodities; or

(ii) Any replacement policy or standard prescribed by the President, the Congress, or the Administrator of General Services; or

(iii) Any contractual obligation.

(b) You may use the exchange/sale authority only if you meet all of the following conditions:

(1) The property exchanged or sold is similar to the property acquired; and

(2) The property exchanged or sold is not excess or surplus, and the property acquired is needed for approved programs; and

(3) The number of items acquired must equal the number of items exchanged or sold unless:

(i) The item(s) acquired perform all or substantially all of the tasks for which the item(s) exchanged or sold would otherwise be used; or

(ii) The item(s) acquired and the item(s) exchanged or sold meet the test for similarity specified at § 101-46.002-9(iii) in that they are a part(s) or container(s) for identical or similar end items; and

(4) The property exchanged or sold was not acquired for the principal purpose of exchange or sale; and

(5) You document at the time of exchange or sale (or at the time of acquisition if it precedes the sale):

(i) That the exchange allowance or sale proceeds will be applied to the acquisition of replacement property; and

(ii) For any property exchanged or sold under this part, the pertinent Federal Supply Classification (FSC) Group, the number of items, the original acquisition cost, the exchange allowance or sales proceeds (as applicable), and the source from which the property was originally acquired i.e., new procurement, excess, forfeiture, or another source other than new procurement. These data, aggregated at the agency level, may be requested by GSA to evaluate use of the exchange/sale authority.

**§ 101-46.205 What special exceptions apply to the exchange/sale authority?**

(a) You may exchange books and periodicals in your libraries for other books and periodicals, without monetary appraisal or detailed listing or reporting.

(b) In acquiring items for historical preservation or display at Federal museums, you may exchange historic items in the museum property account

without regard to the FSC group or the requirement in § 101-46.204(b)(3), provided the exchange transaction is documented and certified by the head of your agency to be in the best interests of the Government and all other provisions of this part are met. The documentation must contain a determination that the item exchanged and the item acquired are historic items.

**Subpart 101-46.3—Exchange/Sale Methods**

**§ 101-46.300 What are the exchange methods?**

Exchange of property may be accomplished by either of the following two methods:

(a) The supplier (e.g., a Government agency, commercial or private organization, or an individual) delivers the replacement property to one of your organizational units and removes the property being replaced from that same organizational unit. This is the normal manner of exchange.

(b) The supplier delivers the replacement property to one of your organizational units and removes the property being replaced from a different organizational unit.

**§ 101-46.301 What are the sales methods?**

(a) You must use the methods, terms, and conditions of sale, and the forms prescribed in § 101-45.304 of this subchapter in the sale of property being replaced, except that the provisions of § 101-45.304-2(a) of this subchapter regarding negotiated sales are not applicable. Section 3709, Revised Statutes (41 U.S.C. 5), specifies the following conditions under which property being replaced can be sold by negotiation, subject to obtaining such competition as is feasible:

(1) The reasonable value involved in the contract does not exceed \$500, or

(2) Otherwise authorized by law.

(b) You may sell property being replaced by negotiation at fixed prices in accordance with the provisions of § 101-45.304-2(b) of this subchapter.

**§ 101-46.302 What are the accounting requirements for the proceeds of sale?**

Except as otherwise authorized by law, you must account for proceeds from sales of personal property disposed of under this part in accordance with the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies, Title 7, Fiscal Procedures, Section 5.5D.

Dated: January 27, 1998.

**David J. Barram,**

*Administrator of General Services.*

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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:** Final rule.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is amending the basis for determining the eligibility of disaster costs associated with State and local repair or replacement standards adopted prior to restoration project approval that change the predisaster construction of a damaged facility. The rule requires that eligible costs associated with State and local repair or replacement standards (building codes, specifications, or standards required for the construction of facilities) be found reasonable and be limited to the standards that are in writing and formally adopted by the State or local government on or before the date of the disaster declaration. This rule staggers the effective dates; the rule will be effective for local standards on January 1, 1999, and for State standards on January 1, 2000.

**DATES:** This rule is effective March 9, 1998 and is applicable for local governments on January 1, 1999 and for States on January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** FEMA has determined that standards, as dealt with in 44 CFR 206.226(b)(3), must be in effect at the time of the disaster and not at the time of project approval. On October 25, 1996, FEMA published a proposed rule in the **Federal Register** at 61 FR 55262 and invited comments for 60 days ending on December 24, 1996.

The regulation proposed that eligible costs associated with State and local repair or replacement standards that change the pre-disaster construction of a facility be limited to the standards that are in place at the time of the disaster declaration date. The term "standards"

is as defined in 44 CFR 206.221 and includes construction codes, specifications, and standards. The phrase "in place" means that standards must be in writing, formally adopted and implemented by the State or local government on or before the date of the disaster declaration. Comments were received from six (6) sources representing State and local governments and a national association.

A frequent general comment was that as a consequence of any disaster, State and local communities learn from the damages that occurred to facilities and begin the process of updating applicable standards. Based upon this conclusion, it was recommended in two comments that FEMA allow applicants to upgrade codes and standards to a set time limit after the declaration date. Three related comments were made that eligibility should remain as stated in 44 CFR 206.226(b)(3). FEMA agrees that post-disaster engineering research and analysis may provide valuable results that may be beneficial to building standards development. However, after thorough review of the statute and related documentation, FEMA concludes that the suggested changes in the comments are not warranted.

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, FEMA interprets the phrase, "\* \* \* in conformity with current codes, specifications, and standards \* \* \*" to mean those standards (i.e., codes, specifications, and standards required for the construction of facilities) that are officially adopted and implemented before the disaster declaration date, not the project approval date. This interpretation also is consistent with earlier documentation.

Two comments were made that the proposed regulation was not consistent with FEMA's National Mitigation Strategy. FEMA does not take that view. FEMA encourages State and local governments to adopt and enforce reasonable standards in an effort to mitigate future losses. However, FEMA believes that the responsibility rests with State and local governments to do so before a disaster occurs. As part of FEMA's National Mitigation Strategy, FEMA believes that the success of the

strategy depends on individuals and government at all levels acknowledging their vulnerability and accepting their responsibility for reducing their exposure to risk from disasters. The adoption and enforcement of reasonable standards benefit the local community by mitigating potential damage to its infrastructure and, in turn, reducing the loss of life and property from such events. To minimize damages, standards need to be in effect and enforced at the time of the disaster. The provision of a window for post-disaster enactment will encourage delays in the implementation of safer building practices. FEMA believes strongly that prudent action on the part of the State and local governments will help to reduce the future need for Federal disaster assistance and the administrative burden on all parties of administering that assistance.

One comment concerned the interpretation of State and local building standards that contain "triggers" designed to require seismic upgrades for damaged structures. The comment was made in the context that the proposed rule would not resolve the problem of the delays resulting from disagreements over the reasonableness of the standards. The comment highlights the practice of using the concept of "triggers" for upgrades in standards. The issue is two-fold—the applicants' inclusion of very low thresholds that warrant very large repairs and reconstruction, and FEMA's authority to determine the reasonableness of thresholds and standards. FEMA continues to maintain its authority to accept only reasonable claims on recovery funds. The language of the rule has been amended to include this clarification.

One comment was that the proposed rule required that the applicable standard be in place "prior" to the disaster declaration date, not "on or before" that date as described in the **Federal Register** SUPPLEMENTARY INFORMATION. The language of the regulation has been made consistent.

The comment period provided the opportunity for the general public and governmental entities to respond to the proposed rule. FEMA believes this period was adequate and that no further consultation is needed.

This rule staggers the effective dates for local and State governments. The rule will be effective for local standards on January 1, 1999, and for State standards on January 1, 2000. The rationale for staggered effective dates is to encourage local governments to act promptly to amend their codes and standards, and also to provide ample

time for all States, including those that have biennial legislative sessions, to amend applicable State codes and standards in order to be eligible for reimbursement of costs associated with State and local repair or replacement standards that change the pre-disaster construction of a facility.

Until the respective effective dates, current § 202.226(b)(3) will continue to apply, that is: "(3) Be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration."

### **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**

The Director certifies that this rule is not a major rule under Executive Order 12291, and will not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to adversely affect the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create any additional burden on small entities. Construction costs incurred as a result of more stringent standards enacted by the State or local applicant after the date of a disaster declaration will not be eligible for Federal public assistance grant funding.

### **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.

**Congressional Review of Agency Rulemaking**

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* The rule is not a "major rule" within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not meet the \$100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

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

Disaster assistance, Public assistance.

Accordingly, 44 CFR Part 206 is 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. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

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

**§ 206.226 Restoration of damaged facilities.**

\* \* \* \* \*

(b) \* \* \*

(3)(i) Be found reasonable, in writing, and formally adopted and implemented by the State or local government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration.

(ii) This paragraph (b) applies to local governments on January 1, 1999 and to States on January 1, 2000. Until the respective applicability dates, the standards must be in writing and formally adopted by the applicant prior to project approval or be a legal Federal or State requirement applicable to the type of restoration.

\* \* \* \* \*

Dated: January 29, 1998.

**James L. Witt,**

*Director.*

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