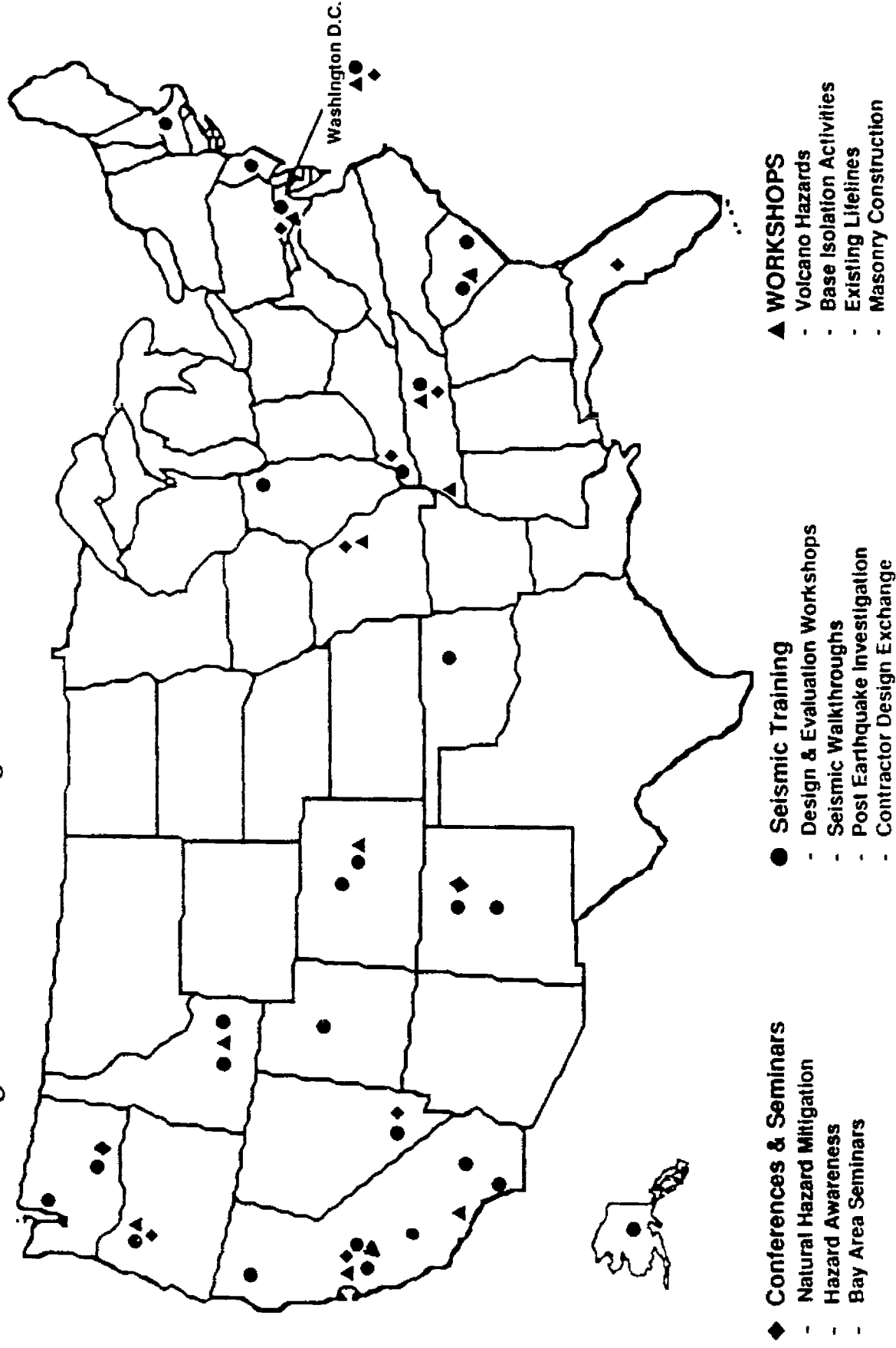


DOE Seismic Hazards Awareness Activities

Understanding and communicating the hazards



Rules and Regulations

Federal Register

Vol. 57, No. 1

Thursday, January 2, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Miscellaneous Changes

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) today is amending subparts A and B of the Financial Assistance Rules, 10 CFR part 600, some of which reflect desired policy changes, some of which are updates to the rules, and some of which correct errors in the rules.

EFFECTIVE DATE: Effective February 3, 1992.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division (PR-122), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8192.
Linda Johnson, Office of the Assistant General Counsel, Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1900.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction
- II. Changes to 10 CFR part 600
- III. Discussion of Comments on Proposed Rule
- IV. Review Under Executive Order 12812
- V. Review under Executive Order 12291
- VI. Review under the Regulatory Flexibility Act
- VII. Review under the Paperwork Reduction Act
- VIII. Review under the National Environmental Policy Act

I. Introduction

With this final rule, The Department of Energy (DOE) is amending its

Financial Assistance Rules (Rules) to implement desired policy changes, update the Rules and correct errors contained therein. The changes will (1) state the need to comply with DOE regulations regarding the use of human subjects in research; (2) expand the criteria justifying a non-competitive financial assistance award to include a statutory mandate to make an award to a specific recipient; (3) include provisions to comply with Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction; (4) revise the criteria for selection of unsolicited applications to state that the determination that a competitive solicitation would be inappropriate must be made in light of other solicitations the DOE may already have issued or is planning to issue; (5) elaborate on the nature of the information needed in the Federal Register notice to explain why an award is being made in response to an unsolicited proposal; (6) change the title of § 600.16; (7) modify the merit review requirements to allow a decision not to merit review a renewal award to be made closer in time to the beginning date of the renewal with appropriate approval; (8) change the words "evaluator" and "evaluation" in § 600.16(i) to "reviewer" and "review" to conform to the terminology used in that Section; (9) codify previously published class deviations for the Small Business Innovation Research (SBIR) program and make conforming changes elsewhere in the rules; (10) eliminate the payment provisions regarding the letter of credit system; (11) clarify the requirement regarding single bid or sole source procurements under research awards; (12) correct the reference in § 600.119(d) from 600.118 to 600.33; (13) change the reference in § 600.120(c) from Attachment F of OMB Circular A-110 to OMB Circular A-133; (14) delete references to the Intergovernmental Cooperation Act of 1968 in §§ 600.113 and 600.421 and the Indian Self-Determination Act in § 600.421; (15) update an address included in § 600.14; and (16) correct typographical errors in §§ 600.103, 600.113, 600.420, 600.424, and 600.436.

Language is being added to § 600.2 to highlight the requirement that research recipients using human subjects must comply with 10 CFR part 745.

The inclusion of an additional ground for justifying the award of financial

assistance on a noncompetitive basis recognizes that at times there is a statutory requirement to award funds to a specific recipient.

The provision concerning the use of seismic design and construction standards whenever Federal grants, loans or contracts are used for all or part of the construction costs is included to comply with Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction.

The criteria for selection of an unsolicited application is changed to provide that a determination that a project would be inappropriate for a competitive solicitation is not by itself a sufficient ground to award it. Recent, current, or planned solicitations must also be considered in deciding whether to award an unsolicited proposal.

The requirement to publish in the Federal Register an explanation for making an award in response to an unsolicited proposal is being elaborated to stipulate that the explanation must also address the selection criteria for unsolicited proposals.

The title of § 600.16 is being changed to "Objective Merit Review" because the entire merit review process is the subject of the section, not just the affiliation of reviewers as the present title states.

The provisions regarding the merit review of applications currently provides that a determination not to conduct a merit review of a project at renewal must be made no later than one year prior to the renewal date. This is being changed to permit a waiver of the one year requirement so long as the project officer's supervisor and the responsible official concur in that determination and a review for technical merit is included as part of the determination. It also clarifies the point that awards which do not go through the merit review process are subject to the requirements established for award of noncompetitive financial assistance.

The words "evaluator" and "evaluation" in § 600.16(i) are being changed to "reviewer" and "review." The former terms have been in the Rules for a number of years and were inadvertently retained when this section was revised in October, 1988 to add the provisions (which use the terms "reviewer" and "review") concerning objective merit review.

Six class deviations affecting the Rules dealing with the Small Business Innovation Research (SBIR) program were published in the *Federal Register* on May 22, 1990 (55 FR 21008) and are herein codified. These deviations (1) simplify record-keeping requirements for Phase I SBIR recipients; (2) permit, at the discretion of the Contracting Officer, lump sum payments to be made to Phase I recipients; (3) permit Phase II SBIR recipients to have budget periods of up to 24 months; (4) require awarding agency approval for time extensions of project periods; (5) require awarding agency approval of any procurement expected to exceed \$25,000 which is being awarded on a sole source basis or for which only one bid was received; (6) permit a fee or profit to be paid to SBIR recipients. Conforming changes are being made in other sections as well. (See paragraph 8.c. of Small Business Innovation Research Policy Directive, 53 FR 23829, June 24, 1988).

Questions have arisen about whether the DOE rulemaking dated October 13, 1989 (54 FR 41943), regarding the elimination of many prior approval requirements, was intended to apply to the prior approval provisions in § 600.119 which deal with procurements under research awards. That rulemaking was intended to apply to procurements under research awards, except for SBIR awards, and changes have been made to § 600.119 to clarify that point.

A typographical error is being corrected in § 600.103(f)(1).

A typographical error is being corrected in § 600.113(e).

References to the Intergovernmental Cooperation Act of 1968 (ICA) in §§ 600.113 and 600.421 and the Indian Self-Determination Act in § 600.421 have been deleted. The ICA has been amended by the Cash Management Improvement Act of 1990 (CMIA), which in particular has affected the requirements regarding state interest payments. The specific impact of the CMIA will not be clear, however, until the Treasury Department completes its implementing regulations. In light of the changing nature of the legal requirements in this area, the Department is concerned that any attempt to list and explicate the relevant statutes might increase confusion and necessitate frequent revision of this regulation. Therefore, all references to specific statutes have been eliminated.

As a result of the phase-out of the Treasury Financial Communication System Letter-of-Credit, and the resultant need for the DOE to convert to another payment system, references to letter-of-credit as a payment mechanism in § 600.112 are being removed. The

section on payments is also being restructured to more closely resemble the payment section in subpart E.

As a result of the promulgation of OMB Circular A-133 ("Audits of Institutions of Higher Learning and Other Non-Profit Institutions") on March 18, 1990, the reference in the Financial Assistance Rules to OMB Circular A-110, Attachment F, which deals with the same topic, is being replaced with a reference to Circular A-133.

An address is being changed in § 600.14(c).

A correction of a citation is being made in § 600.119(d)(2).

A typographical error is being corrected in § 600.420(a).

A typographical error is being corrected in § 600.424(b)(7)(ii).

A typographical error is being corrected in § 600.438(g)(2)(i).

II. Changes to 10 CFR Part 600

A new paragraph (c) is being added to § 600.2 to note the requirement that research involving human subjects must comply with 10 CFR part 745.

A new paragraph (C) is being added to § 600.7(b)(2)(i) to recognize as a grounds for issuing a financial assistance award on a noncompetitive basis a statutory requirement to issue an award to a particular recipient. To use this justification, the recipient must be specifically designated in the statute. The current paragraph (C) has been redesignated (H).

A new paragraph (c) is being added to § 600.12 to require that appropriate seismic design and construction standards be met if DOE funds are used in any building construction.

Section 600.14(c) is changed to update the address for receipt of a guide for preparing unsolicited applications/proposals.

Section 600.14(e)(1)(ii) is changed to provide that the determination of whether it would be appropriate to initiate a competitive solicitation prior to making an award of an unsolicited proposal is one factor to be considered along with whether an application would be eligible for award under a recent, current, or planned solicitation.

Section 600.14(f) is being revised to require that the explanation for making an award in response to an unsolicited application address the selection criteria in § 600.14(e)(1).

The title to § 600.16 is being changed from "Reviewer affiliations" to "Objective merit review".

Section 600.16(a)(3)(ii) is being revised to permit a waiver to the requirement that a determination not to merit review a renewal be made at least one year prior to the renewal date. In such a case

there must be a written justification, approved by the project officer's supervisor and the responsible official, explaining the reasons that a merit review is not being done. Further, the justification must contain a review of the technical merit of the project. The section is also being revised to clarify the point that if a renewal is not merit reviewed, it is to be treated as a noncompetitive award.

Section 600.16(i) is changed to substitute "reviewer" and "review" for "evaluator" and "evaluation" to conform to the terminology in the rest of § 600.16.

Section 600.31(d)(1) is changed to exclude SBIR awards from the provisions for automatic carryover applicable to all other research awards.

Section 600.31(f) is revised to exclude SBIR awards from the requirement that a single budget period not exceed 12 months.

Section 600.103(b)(8) is amended to exclude SBIR awards from the blanket waiver of prior approvals applicable to all other research awards.

In § 600.103(f)(1), "application" is being changed to "applicant".

Section 600.103(h) is amended to provide for the payment of a fee or profit to SBIR recipients.

Section 600.109(a) is amended to include a reference to an SBIR exception to some of the financial management requirements contained in § 600.125.

Sections 600.112 (a), (b), (c), (d), and (e) are revised to eliminate the provisions concerning letter of credit. The amended language continues to give primary status to advance payments to financial assistance recipients in conformance with the OMB Circulars. As a result of the new language, current sections are redesignated as follows: § 600.112(e) is redesignated 600.112(f); § 600.112(f) is redesignated 600.112(g); § 600.112(g) is redesignated 600.112(h); and § 600.112(h) is redesignated 600.112(i).

In § 600.113(b), the reference to the Intergovernmental Cooperation Act of 1968 is deleted.

In § 600.113(e)(1), "ther" is being changed to "other".

Section 600.119(c)(1) is revised to specifically state that single bid or sole source procurements under research financial assistance do not have to be approved by the awarding agency, with the exception of SBIR recipients, which are covered by § 600.125(d)(2).

Section 600.119(d)(2) is changed to correct the reference concerning patents, inventions and copyrights. The proper citation is § 600.33, not § 600.116.

Section 600.120 is amended by replacing the reference to Attachment F of OMB Circular A-110 with a reference to OMB Circular A-133.

Section 600.125 is added to codify the six previously published class deviations to the Rules applicable to the Small Business Innovation Research Program. Cross references to this section have been included in §§ 600.31(d)(1), 600.31(f), 600.103(b)(8), 600.103(h) and 600.109(a).

In § 600.420(a), "expand" is being changed to "expend".

In § 600.421(i), the references to the Intergovernmental Cooperation Act and the Indian Self-Determination Act are deleted.

In § 600.424(b)(7)(ii), "costs" in the second sentence is being changed to "cost".

In § 600.436(g)(2)(i), "seciton" is being changed to "section".

III. Discussion of Comments on Proposed Rule

No comments were received on the proposed rule.

IV. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's rule will revise certain policy and procedural requirements. However, the DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of States.

V. Review Under Executive Order 12291

Today's rule was reviewed under Executive Order 12291. The DOE has concluded that the rule is not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with

requirements of the Executive Order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

VI. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. The DOE has concluded that the rule would only affect small entities as they apply for and receive financial assistance and does not create additional economic impact on small entities. The DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VII. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR part 1320.

VIII. Review Under the National Environmental Policy Act

The DOE has concluded that promulgation of these rules clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500-1508), and the DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure; Cooperative agreements/energy; Copyrights; Educational institutions; Energy; Grants/energy; Hospitals; Indian Tribal governments; Individuals; Inventions and patents; Non-profit organizations; Reporting requirements; and Small businesses.

In consideration of the foregoing, the Department of Energy hereby amends chapter II of title 10 of the Code of Federal Regulations by amending part 600 as set forth below.

Issued in Washington, DC December 28, 1991.

Barton J. Roth,

Acting Director, Office of Procurement, Assistance, and Program Management.

For the reasons set out in the preamble, part 600 of chapter II, Title 10 of the Code of Federal Regulations is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for part 600 continues to read as follows:

Authority: Secs. 644 and 646, Public Law 95-61, 91 Stat. 569 (42 U.S.C. 7254 and 7256); Public Law 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6306), unless otherwise noted.

2. In § 600.2, paragraphs (c), (d), (e) and (f) are redesignated as (d), (e), (f) and (g) respectively, and a new paragraph (c) is added to read as follows:

§ 600.2 Applicability.

(c) A financial assistance recipient performing research, development, or related activities involving the use of human subjects shall comply with DOE regulations in 10 CFR Part 745 "Protection of Human Subjects" and any additional provisions which may be included in the Special Terms and Conditions of the award.

3. In § 600.7, paragraph (b)(2)(i)(G) is redesignated as paragraph (b)(2)(i)(H) and a new paragraph (b)(2)(i)(G) is added to read as follows:

§ 600.7 Eligibility.

(b) * * *
(2) * * *
(i) * * *

(G) A specific recipient has been statutorily designated.

§ 600.12 [Amended]

4. Section 600.12(c) is added as follows:

(c) Provision shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of the Uniform Building Code (1968 or as revised), shall be deemed appropriate.

5. Section 600.14 is amended by revising paragraphs (c) and (e)(1)(ii) and by adding a sentence to the end of paragraph (f) as follows:

§ 600.14 Unsolicited applications.

(c) *Preparation and submission of application.* A guide for preparing unsolicited applications/proposals is available from the Field/Headquarters Support Division (PR-132), Office of Procurement, Assistance and Program Management, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

(e) * * *

(1) * * *

(ii) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, and if, as determined by DOE, a competitive solicitation would be inappropriate.

(f) * * * Such an explanation must address the selection criteria contained in § 600.14(e)(1) (i) and (ii).

6. Section 600.16 is amended by revising the heading and paragraph (a)(3)(ii) as set forth below. In addition, paragraph (i) is amended by changing "evaluators" to "reviewers", "evaluator" to "reviewer" and "evaluation" to "review".

§ 600.16 Objective merit review.

(a) * * *

(3) * * *

(ii) For projects in which multiple renewals are probable, an objective merit review need not necessarily be done at each renewal, but instead at appropriate points during the course of the project. A determination that a project need not be reviewed at each renewal shall be made at the time the initial award is issued, or, in the event that unforeseen circumstances arise which preclude a merit review at a previously scheduled point during the course of a project, the merit review of a renewal application may be waived prior to the renewal of the project. The criteria on which the determination that a project need not be reviewed at each renewal is based, shall be included in the system of objective merit review to be established by the responsible official in accordance with paragraphs (a) (1) and (2) of this section. For a waiver to be issued, the project officer shall prepare, with the concurrence of his or her immediate supervisor, a written determination for the approval of the responsible official that a merit review is not appropriate at the particular point in time, setting forth the circumstances that preclude the merit

review. The determination shall contain an evaluation of the technical merit of the project being proposed for additional support. This determination shall also set forth the facts which would support the justification required by 10 CFR 600.7(b)(2)(i). Finally, the determination shall indicate the reports required under the award and shall be placed in the official file by the Contracting Officer.

7. Section 600.31(d)(1) is revised, paragraph (f)(3) is amended by replacing the period at the end with "; or", and a new paragraph (f)(4) is added, to read as follows:

§ 600.31 Funding.

(d) *Extensions.* (1) Recipients of research awards, except recipients of SBIR awards (See § 600.125(d)), may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension.

(f) * * *

(3) * * *; or

(4) The award is a Phase II SBIR award (see § 600.125(c)).

8. In § 600.103, paragraphs (b)(6) and (h) are revised to read as follows, and in paragraph (f)(1), "application" is changed to "applicant."

§ 600.103 Cost determinations.

(b) * * *

(8) Before a recipient may make changes in the following areas on research financial assistance awards, the written approval of the cognizant Contracting Officer at the DOE is required:

(i) Changes in objectives or scope,

(ii) Temporary replacement or change of principal investigator or change of key personnel, and

(iii) Change of the institution to which the award is to be made.

All other Federal prior approval requirements, including those in OMB Circulars A-21 and A-110, are waived for research, except as provided in § 600.125 for SBIR awards. The recipient

may maintain such internal prior approval systems as it considers necessary.

(h) *Fee or profit.* No increment above cost may be paid to a grantee or subgrantee under a DOE grant or subgrant, except for SBIR recipients as provided in § 600.125(d)(3). A fee or profit may be paid to a contractor providing goods or services under a contract with a grantee or subgrantee.

9. Section 600.109(a) is revised to read as follows:

§ 600.109 Financial management systems.

(a) *General.* Except as provided in paragraph (c) of this section and § 600.125 of this subpart, grantees and subgrantees shall have financial management systems which meet the minimum standards set forth in paragraph (b) of this section.

10. Section 600.112 (a), (b), (c), and (d), are revised, paragraphs (e) through (h) are redesignated as paragraphs (f) through (i) and a new paragraph (e) is added. The revised and added paragraphs are set forth below.

§ 600.112 Payment.

(a) *Scope.* This section prescribes the basic standard and the methods under which the DOE will make payments to grantees, and grantees will make payments to subgrantees and contractors.

(b) *Basic standard.* Methods and procedures for payment shall minimize the time elapsing between the transfer of funds and disbursement by the grantee or subgrantee, in accordance with Treasury regulations at 31 CFR part 205.

(c) *Advances.* Grantees and subgrantees shall be paid in advance, provided that their financial management systems meet the standards for fund control and accountability specified in § 600.109(b), including procedures or planned procedures that will minimize the time elapsing between the transfer of the funds from the U.S. Treasury and their disbursement by the grantee or subgrantee, except as provided in § 600.125(b)(5).

(d) *Reimbursement.* Reimbursement shall be the preferred method when the requirements in paragraph (c) of this section are not met. The DOE may also use the reimbursement method if the major portion of the project or activity will be financed by private financing or Federal loans, with the DOE grant

representing 25 percent or less of the total cost.

(e) *Conversion from advance payment method.* The DOE may convert a grantee from advance payment to reimbursement whenever the grantee no longer meets the criteria for advance payment specified in paragraph (c) of this section. Any such conversion may be accomplished only after the DOE has advised the grantee in writing of the reasons for the proposed action and has provided a period of at least 30 days within which the grantee may take corrective action or provide satisfactory assurances of its intention to take such action.

§ 600.113 Program income.

11. Section 600.113(b) is revised to read as follows, and in paragraph (e)(1), first sentence, "ther" is corrected to read "other".

(b) *Income resulting from advances of DOE funds.* Unless there are statutory provisions to the contrary, a grantee shall remit to DOE any interest or other investment income earned on advances of DOE funds.

12. In § 600.119, paragraphs (c)(1) and (d)(2) are revised to read as follows:

§ 600.119 Procurement under grants and subgrants.

(c) *Prior approval requirements.* (1) A grantee or subgrantee must receive prior written approval from the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when the value of the contract is expected to exceed \$5,000 in the aggregate, and the grantee or subgrantee is not a State government, local government, Indian tribal government, SBIR award recipient (see § 600.125(d)(2)), or research award recipient

(d) . . .

(2) A clause requiring the contractor to comply with applicable DOE requirements concerning patents, inventions and copyrights (see § 600.33).

13. In § 600.120, the introductory text to paragraph (c)(1) is revised as follows:

§ 600.120 Audit requirements.

(c) *Nonprofit organizations.* (1) Except for public hospitals and public colleges and universities that are included in an audit conducted pursuant to Subpart D of this Part, all grantees and subgrantees

that are institutions of higher education, hospitals or other nonprofit organizations shall comply with the requirements of OMB Circular A-133, and shall:

14. Section 600.125 is added as follows:

§ 600.125 Special provisions for Small Business Innovation Research Grants.

(a) *General.* This section contains provisions applicable to the Small Business Innovation Research (SBIR) Program. This codifies six class deviations pertaining to the SBIR program.

(b) *Provisions Applicable to Phase I SBIR Awards.* Phase I SBIR awards may be made on a fixed obligation basis, subject to the following requirements:

(1) While proposed costs must be analyzed in detail to ensure consistency with applicable cost principles, incurred costs are not subject to regulation by the standards of cost allowability;

(2) Although detailed budgets are submitted by a recipient and reviewed by the DOE for purposes of establishing the amount to be awarded, budget categories are not stipulated in making an award;

(3) Prior approval from the DOE for rebudgeting among categories by the recipient is not required. Prior approval from the DOE is required for situation involving sole source or single bid procurements as provided in § 600.125(d)(2). Prior approval from the DOE is also required for any variation from the requirement that no more than one-third of Phase I work can be done by sub-contractors or consortium partners;

(4) Pre-award expenditure approval is not required;

(5) Payments are to be made in the same manner as other financial assistance (see § 600.112), except that, when determined appropriate by the cognizant program official and contracting officer, a lump sum payment may be made. If a lump sum payment is made, the award must be conditioned to require the recipient to return to the DOE amounts remaining unexpended at the end of the project if those amounts exceed \$500;

(6) Recipients will certify in writing to the Contracting Officer at the end of the project that the activity was completed or the level of effort was expended. Should the activity or effort not be carried out, the recipient would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so

long as they are consistent with § 600.115;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of the DOE.

(c) *Provision Applicable to Phase II SBIR Awards.* Phase II SBIR awards may be made for a single budget period of 24 months.

(d) *Provisions Applicable to Phase I and Phase II SBIR Awards.* (1) The prior approval of the cognizant DOE Contracting Officer is required before the final budget period of the project period may be extended without additional funds.

(2) A grantee or subgrantee must receive the prior written approval of the awarding party before entering into any sole source contract or a contract where only one bid or proposal is received when the value of the contract is expected to exceed \$25,000 in the aggregate.

(3) A fee or profit may be paid to SBIR recipients.

§ 600.420 [Amended]

15. In the first sentence of paragraph 600.420(a), "expand" is corrected to read "expend".

16. Section 600.421(i) is revised to read as follows:

§ 600.421 Payment.

(i) *Interest earned on advances.* Unless there are statutory provisions to the contrary, grantees and subgrantees shall promptly, but at least quarterly, remit to the Federal agency interest earned on advances. The grantee or subgrantee may keep interest amounts up to \$100 per year for administrative expenses.

§ 600.424 [Amended]

17. In the second sentence of paragraph 600.424(b)(7)(ii) "costs" is corrected to read "cost".

§ 600.436 [Amended]

18. In paragraph 600.436(g)(2)(i), "secciton" is corrected to read "section".

[FR Doc. 91-31281 Filed 12-31-91; 8:45 am]
BILLING CODE 6450-01-M

DEFENSE PROGRAMS

**SAFETY INFORMATION LETTER**

Office of Self-Assessment and Emergency Management • US Department of Energy • Washington, DC

ISSUE NO. 91-01

SEPTEMBER 1991

SEISMIC SAFETY OF FEDERAL AND FEDERALLY ASSISTED OR REGULATED NEW BUILDING CONSTRUCTION**Introduction**

This is the first of a series of generic communications established to provide information on safety concerns for Defense Programs (DP) facilities. No formal response is required.

Executive Order 12699 of January 5, 1990, requires that new Federal buildings, new buildings constructed for Federal occupancy, and new buildings constructed through Federal grants, loans, guaranteed loans, or through loan mortgage insurance programs be designed and constructed using appropriate seismic standards.

Purpose

The purpose of this Safety Information Letter is to notify DP facilities of the above noted Executive order, and to establish the link between this Executive order and existing U.S. Department of Energy (DOE) orders and requirements.

The Earthquake Hazard Reduction Act of 1977 as amended (42 U.S.C. 7701 et seq.) was enacted by Congress to reduce risks to life and property from future earthquakes in the United States. In response to this Act, the National Earthquake Hazards Reduction Program was created and the Interagency Committee on Seismic Safety in Construction (ICSSC) was formed to implement its provisions. The ICSSC prepared Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. It was signed into law by the President on January 5, 1990.

The specific purpose of the Executive order for Federal buildings is indicated in the sections that follow.

New Federal Buildings

"The purposes of these requirements are to reduce risks to the lives of occupants of buildings owned by the Federal Government and to persons who would be affected by the failures of Federal buildings in earthquakes, to

improve the capability of essential Federal buildings to function during or after an earthquake, and to reduce losses of public buildings - all in a cost effective manner."

Federally Leased, Assisted, or Regulated Buildings

"The purposes of these requirements are to reduce risks to the lives of persons who would be affected by earthquake failures of Federally assisted or regulated buildings, and to protect public investments - all in a cost effective manner."

Executive Order 12699 applies to new building construction only; refurbishment of existing buildings is not included. Additions to existing buildings are considered new construction and should meet the requirements of this order.

Seismic Safety of Defense Programs Facilities

In accordance with existing policy, all new DOE facilities must be designed and constructed in a manner that presents no undue risk to the health and safety of personnel or to the surrounding communities. Acceptable seismic standards are enumerated in DOE Order 6430.1A (General Design Criteria) and implementing reference UCRL 15910 (Design and Evaluation Guidelines for DOE Facilities Subjected to Natural Phenomena Hazards). DOE Order 6430.1A, which is currently being revised, will reference Executive Order 12699. Thus, compliance with the Executive order can be achieved by fully implementing DOE Order 6430.1A. Also, the DOE Office of Procurement is revising procurement regulations for new programs that provide grants for construction.

DP Seismic Safety Coordinators

Jeffrey Kimball and Krishan Mutreja from the Office of Engineering and Operations Support have been appointed as DP Seismic Safety Coordinators.

The contact telephone numbers for the coordinators are:

Jeffrey Kimball	FTS 233-6413
Krishan Mutreja	FTS 233-5507

Executive Order Implementation

It should be noted that any proposal for exemption under this executive order must be based on uniform DOE criteria. Criteria for exemptions based on such reasons as non-applicability or low regional seismicity must be approved by the appropriate Headquarters Program Office. All new facility plans shall be reviewed by a technically qualified staff for seismic safety. For DOE owned or leased buildings, a form of certification of compliance is required prior


to acceptance of the building. Such statements of compliance may include a signed and stamped verification from the engineer and architect that the specified seismic safety requirements have been met.

Reporting

This Executive order requires the Federal Emergency Management Agency (FEMA) to request information from DOE on the status of its procedures and progress in its implementation plan, and the impact of this order on its operations. FEMA will include an assessment of the execution of this order in its Annual Report to the Congress on the National Earthquake Hazards Reduction Program.

It is currently planned that all reporting from DOE shall be coordinated by the Office of Environment, Safety and Health.

Should you have a question concerning Executive Order 12699 or want a copy of the order, please contact Krishan Mutreja on FTS 233-5507.


Donald F. Knuth
Director
Office of Self-Assessment
and Emergency Management
Defense Programs

Technical contact: Krishan Mutreja, DP-62
FTS 233-5507

Reference: Guidelines and Procedures for Implementation of the Executive Order on Seismic Safety of New Construction (National Institute of Standards and Technology - NISTIR 4635)

Bibliography of Reports Related to Natural Phenomena Hazards Developed by the DOE/EH Program

Hazard Estimates

Coats, D. W. and R. C. Murray (1984), Natural Phenomena Hazard Modeling Project: Seismic Hazard Models for Department of Energy Sites, Lawrence Livermore National Laboratory report UCRL-53582, Rev. 1.

Coats, D. W. and R. C. Murray (1985), Natural Phenomena Hazards Modeling Project: Extreme Wind/Tornado Hazard Models for Department of Energy Sites, Lawrence Livermore National Laboratory report UCRL-53526, Rev. 1.

Savy, J. B. and R. C. Murray (1988), Natural Phenomena Hazards Modeling Project: Flood Hazard Models for Department of Energy Sites, Lawrence Livermore National Laboratory report UCRL-53851.

McCann, M. W. and A. C. Boissonnade (1988), Preliminary Flood Hazard Estimates for Screening Department of Energy Sites, Lawrence Livermore National Laboratory report UCRL-21045.

McCann, M. W. and A. C. Boissonnade (1988), Probabilistic Flood Hazard Assessment for the N Reactor, Hanford, Washington, Lawrence Livermore National Laboratory report UCRL-21069.

State of Practice Manuals

Eagling, D. G., Seismic Safety Guide, LBL-9143 (NTIS No. DE84000542), 1983.

ED2 (1985), Suspended Ceiling System Survey and Seismic Bracing Recommendations, Lawrence Livermore National Laboratory report UCRL-15714.

EQE (1986), Practical Equipment Seismic Upgrade and Strengthening Guidelines, Lawrence Livermore National Laboratory report UCRL-15815.

EQE (1991), Structural Concepts and Details for Seismic Design, Lawrence Livermore National Laboratory report UCRL-CR-106554.

McDonald, J. R. (1988), Structural Details for Wind Design, Lawrence Livermore National Laboratory report UCRL-21131.

Design Guidelines

Kennedy, et.al. (1990), Design and Evaluation Guidelines for Department of Energy Facilities Subjected to Natural Phenomena Hazards, Lawrence Livermore National Laboratory report UCRL-15910.

Kennedy, et.al. (1990), Workshop Notes on Design and Evaluation Guidelines for Department of Energy Facilities Subjected to Natural Phenomena Hazards.

Mini Courses

Kennedy, R. P., and S. A. Short (1985), Seismic Analysis, Lawrence Livermore National Laboratory report UCRL-15742.

McDonald, J. R. (1985a), Extreme Winds and Tornadoes: An Overview, Lawrence Livermore National Laboratory report UCRL-15745.

McDonald, J. R. (1985b), Extreme Winds and Tornadoes: Design and Evaluation of Buildings and Structures, Lawrence Livermore National Laboratory report UCRL-15747.

McCann, M. W. and H. J. Owen (1985), Overview of Flood Considerations, Lawrence Livermore National Laboratory report UCRL-15743.

Nicoletti, J. P., L. E. Malik and P. G. Griffin (1985), Seismic Design, Lawrence Livermore National Laboratory report UCRL-15744.

Yanev, P. L., S. Hom, C. A. Kircher and N. D. Bailey (1985), Emergency Preparedness, Lawrence Livermore National Laboratory report UCRL-15746.

Conference Proceedings

Lawrence Livermore National Laboratory (1985), Proceedings DOE Natural Phenomena Hazards Mitigation Conference, Lawrence Livermore National Laboratory report CONF-8510118.

Lawrence Livermore National Laboratory (1989), Proceedings Second DOE Natural Phenomena Hazards Mitigation Conference, Lawrence Livermore National Laboratory report CONF-8910192.

Lawrence Livermore National Laboratory (1991), Proceedings Third DOE Natural Phenomena Hazards Mitigation Conference, Lawrence Livermore National Laboratory report CONF-9110122.

Other

Harben, P.E. (1991) Earthquake Alert System Feasibility Study, Lawrence Livermore National Laboratory report UCRL-LR-109625.

Environmental Protection Agency



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 14 1992

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

Honorable Wallace E. Stickney
Director
Federal Emergency Management Agency
Washington, DC 20472

Dear Mr. Stickney:

This is in response to your June 30, 1992, letter, addressed to Administrator Reilly, in which you requested information on the implementation of Executive Order 12699, "Seismic Safety of New Federal/Federally Assisted or Regulated New Building Construction Status."

Enclosed is a copy of the letter sent to Mr. Gary D. Johnson, Office of Earthquakes and Natural Hazards providing information on the status of the Environmental Protection Agency's progress in implementing the Order.

If you have any questions or need additional information, please call me on (202) 260-2030.

Sincerely,

A handwritten signature in black ink, appearing to read "Rich Lemley", is written over the typed name.

Rich Lemley
Director, Facilities Management
and Services Division

Enclosure

cc: Thomas J. Moran



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Mr. Gary D. Johnson
Assistant Associate Director
Office of Earthquakes and Natural Hazards
Federal Emergency Management Agency
Washington, DC 20472

Dear Mr. Johnson:

I was recently named the seismic safety coordinator for the Environmental Protection Agency in response to the July 1991, Guidelines and Procedures for Implementation of the Executive Order on Seismic Safety of New Construction. This letter is in response to your request for information on the progress of EPA programs toward the actions required by Executive Order 12699 through the end of Fiscal Year 1992.

The Order affects EPA directly in the design and construction of EPA- and GSA-owned and leased facilities. The Facilities Management and Services Division (FMSD) is the focal point for all new construction occupied by EPA.

I attended the May 1992, workshop designed to help Federal Agencies respond to the requirements of Executive Order 12699 and began developing a communication to be sent to all EPA Regions and other affected facilities informing them of the requirements of the Executive Order. Also, I am preparing recommendations for the most effective administrative structure to fully and properly implement the requirements of the Order. These items will be completed before the end of this fiscal year.

The Agency is committed to implementing the Order in budgeting for new buildings and facilities. Also, the program which is being developed will insure that any seismic safety actions being taken are reviewed by FMSD to assure that they are technically sound.

Building and laboratory standards are being developed to include implementation of the codes acceptable to achieve substantial equivalency with the most recent or immediately preceding edition of the NEHRP Recommended Provisions for the Development of Seismic Regulations for New Buildings. These standards will be applied to all new construction for EPA. The standards are planned to be final by the 2nd quarter of FY93.

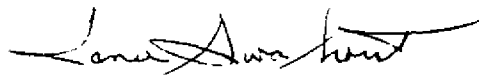
In addition, a proposed Architect/Engineer guidance document created by FMSD includes a special requirement that the completed design for all new construction projects shall be submitted with proper certification from a Registered Structural Engineer that the previous substantial equivalency clause is met. This document is planned to be final by the end of this fiscal year.

Programs of Requirements (PORs) for new EPA facilities have included requirements implementing the Order at least since 1991 and will continue under the program. Thus, the benefits of reduced risk to the lives of building occupants and reduced potential from damage losses have been realized with minimal additional cost or delay.

Finally, seismic safety training and education activities are recognized to be an integral and important part of a successful program, and nationwide support of such activities is anticipated. FMSD conducts an annual Building and Facilities workshop attended by facilities managers from all ten EPA Regions in the fall of each year, and seismic safety considerations are planned to be discussed at the next and subsequent workshops.

If you need any more information, please contact me at (202) 260-3015.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Swanhorst", with a stylized flourish at the end.

Lance Swanhorst, Civil Engineer
Engineering, Planning and
Architecture Branch (PM-215)

cc: Thomas J. Moran

Federal Deposit Insurance Corporation



Federal Deposit Insurance Corporation
Washington, DC 20429

Division of Accounting and Corporate Services

July 9, 1992

Gary D. Johnson
Assistant Associate Director
Office of Earthquakes and Natural Hazards
Federal Emergency Management Agency
Washington, D.C. 20472

Dear Mr. Johnson:

This is in response to your letter of June 10, 1992 to me, and to the Director of FEMA, Wallace E. Stickney's letter of June 30, 1992 to FDIC's Chairman, The Honorable William Taylor, on the subject of the January 5, 1990 Executive Order 12699, "Seismic Safety of Federal And Federally Assisted or Regulated New Building Construction", 55 Fed. Reg. 835.

The FDIC proposes to comply with the requirements of Executive Order 12699 as follows:

FDIC's Policy on Seismic Safety:

It is the policy of the FDIC in any new building construction, to use the 1992 Supplement to BOCA National Building Code or the latest revision of the BOCA Code and/or any applicable local building code so long as such local code is determined by FDIC to provide adequately for seismic safety.

Implementation of FDIC's Policy on Seismic Safety:

This policy will be implemented by publication in FDIC's corporate-wide Directive System.

Budget Considerations:

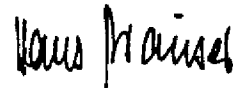
FDIC will accommodate the implementation of this policy in its budget process at the time new construction projects are authorized by its Board of Directors.

FDIC's proposal to comply with the requirements of Executive Order 12699 was discussed with Mr. Arthur Zeizel of your staff in a telephone conversation with Mr. Thomas W. Loudon, Jr.,

FDIC's FEMA Coordinator on June 26, 1992. It was agreed that FEMA would review FDIC's proposed policy and its method of implementation set forth above and advise FDIC accordingly prior to formal publication.

It you have any questions please do not hesitate to call me on 898-7219.

Sincerely,

A handwritten signature in black ink, appearing to read "Hans Prauser". The signature is written in a cursive, slightly stylized font.

Hans Prauser
Chief, Facilities Planning Unit

cc: James A. Watkins
Dave Shaffer
Thomas W. Loudon, Jr.

Federal Emergency Management Agency




SL

Federal Emergency Management Agency

Washington, D.C. 20472

JUN 18 1991

MEMORANDUM FOR: Associate Directors
Administrators
Office Directors

FROM:  Grant C. Peterson
Associate Director
State and Local Programs and Support

SUBJECT: Responsibilities under Executive Order 12699,
Seismic Safety of Federal and Federally
Assisted or Regulated New Building
Construction

Executive Order 12699, copy attached, was signed on January 9, 1990. It directs FEMA and other Federal agencies to take action to reduce risks from an earthquake to the lives of occupants of new buildings owned, leased, assisted and regulated by the Federal government, to improve the capability of essential Federal buildings to continue functioning after an earthquake and to reduce losses to the public. All Federal programs involving new building construction are required by this Executive Order and by the National Earthquake Hazards Reduction Program Reauthorization Act (P.L. 101-614) to take some immediate actions to improve seismic safety and to initiate regulations or implementing measures before February 1, 1993.

Actions Required

1. Identify which of your programs are affected by the Executive Order. Provide me with this information along with the name and telephone number of a designated contact person within two weeks of the date of this memorandum.
2. Review program regulations and procedures for the design and construction of new Federal buildings to ensure that the building is designed and constructed in accordance with appropriate seismic design and construction standards. FEMA is beginning the process to adopt seismic design and construction standards for agency use in accord with the Order.
3. Ensure that any new building to be constructed and leased for Federal use is designed and constructed in accordance with appropriate seismic and construction standards. Local building codes shall be used in design and construction and may be augmented when necessary to achieve appropriate seismic design and construction standards.

4. Plan and initiate, no later than February 1, 1993, measures to assure appropriate consideration of seismic safety for newly constructed buildings where FEMA:

(A) assists in the financing through Federal grants or loans,

(B) guarantees the financing through loans or mortgage insurance programs.

5. Plan to require use of appropriate seismic design and construction standards, no later than February 1, 1993, for buildings where FEMA has the generic responsibility for regulating the structural safety.

6. Continue to maintain in force any seismic safety levels that are higher than those imposed by this Order in new building construction programs if such levels were required as of the date of the Order (January 5, 1990).

7. Plan to issue or amend existing regulations or procedures to comply with this Order, and for their implementation through the usual budget process before February 1, 1993.

Reporting Requirements

The Director of FEMA is responsible for reporting to the President on the execution of this Order by all agencies affected by this Order. An assessment of the execution of the Order shall be included in the biennial report to Congress on the National Earthquake Hazards Reduction Program. You should be prepared to provide me, upon request, with information on the status of your procedures, progress in implementation, and the impact of this Order on operations.

Technical and Legal Assistance

An Interagency Committee on Seismic Safety in Construction (ICSSC) will provide technical assistance to agencies. The ICSSC is responsible to FEMA for the recommendation of the cost-effective seismic design and construction standards and practices required by this Order. It also is now completing a document, Guidelines and Procedures for Implementation of Executive Order on Seismic Safety to assist agencies in establishing their seismic safety program. Participation in the ICSSC is open to all agencies with programs affected by this Order and consensus procedures will be used.

The Office of Earthquakes and Natural Hazards within SLPS represents FEMA on this interagency committee and will be the principal source of technical assistance to your programs. All guidance information and materials will be provided you as soon as they become available. This Office is preparing a briefing for all affected FEMA programs in late July or early August.

This briefing will review the full extent of the Executive Order and provide opportunity for questions and answers. For technical assistance on the Order, communicate with Arthur Zeizel, 646-2805.

The Office of General Counsel will provide legal support to FEMA programs for implementation of the Order. For legal assistance, communicate with Stephanie Ryan on 646-3690.

Attachment: Executive Order 12699

Distribution: B(HqDivChiefs)



Federal Emergency Management Agency

Washington, D.C. 20472

JUL 21 1992

MEMORANDUM FOR: Gary D. Johnson
Assistant Associate Director
Office of Earthquakes and Natural Hazards

FROM: Arthur J. Zeizel *Arthur J. Zeizel*
Policy Manager (Hydrogeology)
Office of Earthquakes and Natural Hazards

SUBJECT: 1992 Progress Report on EO 12699

This provides a brief summary of the activities of the Office of Earthquakes and Natural Hazards in the implementation of Executive Order 12699. This is in addition to our efforts in assessing and reporting on the execution of the Executive Order by other Federal agencies and our bi-monthly coordination meetings with affected FEMA representatives.

Attachment

1992 PROGRESS REPORT ON EXECUTIVE ORDER 12699

OFFICE OF EARTHQUAKES AND NATURAL HAZARDS

FEMA, as the lead agency in the NEHRP, has taken an active role in helping to launch Executive Order action by the principal NEHRP agencies and by the other affected Federal agencies. The Director of FEMA wrote directly to the heads of those agencies to enlist their assistance in ensuring that the implementation actions were initiated and coordinated by their programs. Further, the Director sent the agencies copies of the ICSSC *Guidelines* for implementation and the ICSSC recommended design and construction practice standards appropriate for agency adoption.

FEMA supported the ICSSC in its writing of the *Guidelines*, the recommended standards, and the model preamble distributed to assist agencies in the development of rules and regulations required by the Executive Order.

Two interagency workshops were sponsored by FEMA to familiarize Federal agencies with the Executive Order and to assist them in the formulation of the required regulations and procedures for implementation.

Action by state and local governments, multistate organizations, and professional groups is critical to the successful implementation of the Order throughout the nation. To assist in this area, FEMA conducted workshops, briefing sessions, and cooperative activities with a number of these organizations. An individualized home study program on the Order is being developed that will provide state and local officials with the information needed to implement the Order.



Federal Emergency Management Agency

Washington, D.C. 20472

JUL 29 1992

MEMORANDUM FOR: Gary D. Johnson
Assistant Associate Director
Earthquakes and Natural Hazards

FROM: *Robert G. Chappell*
Robert G. Chappell
Assistant Associate Director
Disaster Assistance Programs

SUBJECT: 1992 Progress Report to FEMA on Executive
Order 12699

A progress report is attached per the request of your memorandum of July 1, 1992. As noted under Section 3 of this report, we will be requesting your technical assistance in describing a method to evaluate building codes for seismic safety.

Attachment

1992 PROGRESS REPORT TO FEMA
ON
EXECUTIVE ORDER 12699

1. Introduction

During Presidentially declared major disasters and emergencies, the Disaster Assistance Program (DAP) provides financial assistance to state and local governments and to certain private non-profit organizations, to repair disaster-damaged facilities.

The DAP program may get involved in new building construction covered by the Executive Order in two ways:

- a. Buildings may be so severely damaged that replacement of the building is required, and FEMA provides assistance for the construction of a new building.
- b. FEMA may also provide assistance for new building construction, when the state or local government decides a damaged facility should not be repaired or replaced, and a new building is constructed for some other selected public purpose.

2. Status of Actions on the Executive Order

Responsibilities

FEMA is required to ensure that new building construction that it funds or assists in funding is built to the seismic standards required by the Executive Order. FEMA is also given the responsibility by the executive order to encourage subgrantees and grantees to adopt seismic standards for all new building construction.

Course of Action

Regulations. The Disaster Assistance Program is drafting regulations to implement the Executive Order. These regulations will require the locality to adopt a seismic code meeting NEHRP Recommended Provisions for all new building construction within its jurisdiction to be eligible for FEMA disaster assistance for new building construction.

3. Progress on Implementation Plan

Regulations

DAP has made the decision that new regulations will be drafted that require the locality to adopt a seismic code for all