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Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

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**44 CFR Part 81****Purchase of Insurance and Adjustment of Claims****AGENCY:** Federal Emergency Management Agency (FEMA).**ACTION:** Final rule.

**SUMMARY:** This final rule amends the list of eligible states under the Federal Crime Insurance Program to remove the States of Minnesota, New Mexico, Washington and Wisconsin making its citizens ineligible to purchase Federal Crime Insurance policies against burglary and robbery losses under the Federal Crime Insurance Program after the effective date.

**EFFECTIVE DATE:** October 28, 1983.**FOR FURTHER INFORMATION CONTACT:**

Mr. Robert J. DeHenzel, Director, Urban Property Insurance Operations Division, Office of Insurance Operations, Federal Insurance Administration, Donohoe Building, 500 "C" Street, SW., Room 433, Washington, D.C. 20472, Telephone Number 202-287-0800.

**SUPPLEMENTARY INFORMATION:** Proposed rule amendment was published on page 31892 of the Federal Register of July 12, 1983, and invited comments for 60 days ending September 12, 1983, amending the list of eligible states under the Federal Crime Insurance Program to remove the States of Minnesota, New Mexico, Washington and Wisconsin. Comments were received from producers and individual policyholders and considered before final action was taken.

This action is being taken under the authority of 12 U.S.C. 1749bbb-10a, on the basis of the Administrator's continuing review of the crime insurance availability in the various states. This action follows extensive consultations with state insurance authorities for the States of Minnesota, New Mexico, Washington and Wisconsin, who have specifically certified that the Federal Crime Insurance Program is no longer needed in their states. It also takes into account the views expressed by the Independent Insurance Agents Association and the Professional Insurance Agents Association that crime insurance is being made available through the private sector in the States of Minnesota, New Mexico, Washington and Wisconsin.

It has been determined that the actions falls within the category of actions which has been categorically excluded from the requirements of 44 CFR Part 10 dealing with the preparation of environmental assessments, and no such assessment has been prepared.

It also has been determined because of the very small number of policies in affected states that this rule will not have a substantial or significant impact upon the number of small entities. Furthermore, there are no information collection requirements involved which require review under Section 3504(h) of the Paperwork Reduction Act of 1978.

**List of Subjects in 44 CFR Part 81**

Claims, Crime insurance.

**PART 81—(AMENDED)**

Accordingly, § 81.1(b) is revised to read as follows:

**§ 81.1 Jurisdictions eligible for sale of crime insurance.**

(b) On the basis of the information available, the Administration has determined that the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and the states set forth in this paragraph have an unresolved critical market availability situation that requires the operation of the Federal Crime Insurance Program therein as of October 1, 1983.

Accordingly, the program is in operation in the following jurisdictions:

Alabama	Massachusetts
Arkansas	Missouri
California	New Jersey
Colorado	New York
Connecticut	North Carolina
Delaware	Ohio
Florida	Pennsylvania
Georgia	Rhode Island
Illinois	Tennessee
Iowa	Virginia
Kansas	District of Columbia
Louisiana	Puerto Rico
Maryland	Virgin Islands

(Sec. 1247, Urban Property Protection and Reinsurance Act, of 1968, as Amended, 12 U.S.C. 1749bbb-17)

Issued at Washington, D.C.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

September 22, 1983.

[FR Doc 83-26376 Filed 9-27-83, 8:45 am]

BILLING CODE 6710-01-M

**44 CFR Part 302**

[Docket—Prep—302A]

**Civil Defense; State and Local Emergency Management Assistance Program; Contributions for Civil Defense Personnel and Administrative Expenses****AGENCY:** Federal Emergency Management Agency (FEMA).**ACTION:** Final rule.

**SUMMARY:** This rule revises regulations governing the program for financial contributions to States and for State and local civil defense personnel and administrative expenses. This revision is necessary to clarify and abridge the existing regulations and to adopt the allocation formula and procedures set out in 44 CFR 302.5.

**EFFECTIVE DATES:** This rule is effective October 28, 1983 except for § 302.5, which is effective September 28, 1983.

**FOR FURTHER INFORMATION CONTACT:** Donald J. Carbone, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202-287-3850).

**SUPPLEMENTARY INFORMATION:** On June 13, 1983, FEMA published for comment in the Federal Register (48 FR 27105-27112) a notice of proposed rulemaking on 44 CFR 302 under the Federal Civil Defense Act of 1950, as amended. This followed an Advance Notice of Proposed Rulemaking published at 47 FR 14500-14501.

The Emergency Management Assistance (EMA) program funds are allocated annually to the States based on a formula developed in accordance with the stipulations of that Act and set forth in the existing rule, § 302.3. The formula computation in the rule has been revised to take into consideration those areas that may be affected by natural disasters, in accordance with the amendment to subsection 205(d) of the Act by Public Law 97-86. Also, the Federal Civil Defense Act in 1980 and 1981 defined an improved civil defense program as encompassing "civil defense" preparedness for natural (and technological) disaster as well as enemy attack. Therefore, a thorough revision of the allocation formula has been made to ensure that it best serves the amended civil defense program.

Subsection 205(d) of the Act specifies that for each fiscal year the FEMA Director "shall allocate to each State, in accordance with his regulations and the total sum appropriated hereunder, amounts to be made available to the States for the purposes of this section." The subsection further stipulates: "Regulations governing allocations to the States shall give due regard to: (1) The criticality of the target and support areas and the areas which may be affected by natural disaster [*italized phrase added by Public Law 97-86, December 1, 1981*] with respect to the development of the total civil defense readiness of the Nation, (2) the relative state of development of civil defense readiness of the State, (3) population, and (4) such other factors as the Director shall prescribe."

#### Comments and Considerations

A total of seven responses with comments were received: one from FEMA Region VI, five from State officials and one from a county official. The substantive comments received are paraphrased below, in the order of the pertinent sections or paragraphs of the rule, along with FEMA's response.

**Section 302.1(a):** The phrase "up to one half of the" has been inserted in this section. Does this mean that financial contributions to State and local governments are going to be officially pegged at some figure less than 50 percent? (State comment)

Section 205 of the Federal Civil Defense Act, as amended, contains the clause "Provided, that the financial contributions to the States for the purposes of this section shall not exceed one-half of the total cost of such necessary and essential State and local civil defense personnel and administrative expenses." The rule simply reflects this statutory limit.

**Section 302.3(a)(2):** The wording of this section appears to imply that the State must fund at least 50 percent of eligible costs of this program. We recommend the wording be changed to read "Provide that the State and participating local governments shall match the Federal contribution provided for necessary and essential costs \* \* \*." (a state)

The wording of § 302.3(a)(2) has been changed to read, "Provides assurance of nonfederal contributions at least equal to Federal funding for necessary and essential \* \* \*."

**Section 302.3(g):** A State may appeal a Regional Director's action to the Associate Director, State and Local Programs and Support, while local governments may appeal adverse decisions to the Director. Eliminate this

inconsistency. Also increase the time for the submission of an appeal from 15 to 30 days. (a State)

Section 302.3(g)(2) has been corrected to indicate that local appeals are to be submitted to the Associate Director for State and Local Programs and Support, and the time within which an appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director has been changed from 15 to 30 days.

**Section 302.5:** No consideration appears to be given to those local governments that have active programs but are not participating in the program. (a State)

The States, through means of their suballocations, may bring into the program those local governments that have active programs but are not participating. If the non-federal funds are insufficient States may submit requests for a portion of the reserve fund for this purpose. FEMA cannot collect accurate data on those local jurisdictions to incorporate into the formula computation.

**Section 302.5b:** Those States that have developed their Emergency Services beyond FEMA requirements should be funded to continue the expansion and growth of the emergency management programs. (a State)

One of the possible uses of the 2-percent reserve fund is to provide additional funds for special efforts that would enhance State or local capabilities, including the expansion and growth of emergency management programs.

**Section 302.5b:** EMA funds should be based on two primary factors: (1) Population density and (2) capability development in the emergency management programs. (a State)

FEMA believes that the formula factors in § 302.5 of the rule do consider adequately: (1) Population density on a national basis—33 percent for State population—and (2) capability development in the emergency management programs—the entire amount of EMA program funding to States is for the purpose of maintaining and developing capability in emergency management.

**Section 302.5(b):** To the lead paragraph, add: "States shall take these factors into consideration when allocating funds to subgrantees." This is to insure that local jurisdictions are treated fairly and in the same manner as the States. (a county comment)

FEMA does not consider it to be necessary to prescribe a formula by which the States will suballocate funds to their local jurisdictions. Therefore it has not adopted a suggested amendment

that would mandate States to use the allocation formula in the rule when making suballocations.

**Section 302.5b(1):** Having a formula in which the major portion of the allocation is based on the previous year's funding level tends to encourage a maintenance type program.

Maintaining State emergency management capability is one of the prime purposes of the EMA program. To factor less than 50 percent of the formula on the basis of the prior year State allocations would negate that purpose. Improvement of staff may be accomplished by requests for a portion of the reserve fund if a State has insufficient funds for that purpose.

**Section 302.5(b)(3):** Before "(local level)," add: "Local municipalities that are participating members of a formal Unified Emergency Services Organization in a county which is an EMA participant shall be considered EMA participants for this purpose." This is to insure that organizations which have joined together in a Unified Emergency Services Organization are not penalized. (a county)

Consideration of local municipalities that are participating members of a formal Unified Emergency Services Organization cannot be included because the 10-percent factor considers population of participating local jurisdictions rather than numbers of jurisdictions. This avoids double counting of participants for purposes of the formula, and is in consonance with the statement in the discussion section of the proposed rule, "To use numbers of participant jurisdictions, however, would be unfair, especially to States that have chosen to consolidate Civil Defense units for efficiency."

**Section 302.5(b)(5):** A hold-harmless provision should be included to prevent a severe negative impact on the State's operation and citizens. (a State)

The formula is based on the provisions of the Federal Civil Defense Act, as amended, which does not guarantee that States will receive each fiscal year at least as much funding as the previous year. Further, the level of funding for each year (and consequently the amount of the reserve for supplemental funding) is unknown until Congress approves the FEMA appropriation. As a general principle, however, FEMA will seek at least to maintain capability to the extent funds permit.

**Section 302.5(e):** The new formula deals primarily with the President's budget request to Congress. It is not clear if the formula will be used in the final appropriation. It appears that the

final annual allocation to the States will be based more on the five factors outlined in the proposed revision rather than the formula. Should this be the case, then the issue of "too subjective" remains with the program. If these factors remain unchanged, then possibly these factors could be better explained in terms that the States could understand and react to. The bottom line is to eliminate, to the maximum extent possible, subjective and judgmental factors that cloud or conceal the EMA allocation process. (a State)

In order to provide the States with EMA planning figures in advance of a fiscal year, the formula is necessarily applied to the EMA budget request. However, § 302.5(g) of the rule states in part, "By September 30 (or as soon thereafter as feasible) the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds." The formula distribution is later adjusted on the bases of the States' applications, the appropriation, and the Regional Director's recommendation and is supplemented by the reserve fund.

It must be recognized that strict application of a mathematical formula may result in some inequities, depending on various circumstances in the States. The five factors in § 302.5(e) are designed to accommodate such conditions. The revised allocation procedure does reduce subjectivity but recognizes that a static formula should not substitute entirely for reasoned judgment based on special considerations. The Act itself recognizes this in allowing the Director discretion.

**Section 302.5(f):** Remove the provision for making tentative allocations to States. (FEMA Regional comment) FEMA chooses to retain the provision for making tentative allocations in September in order to permit consideration of the Regional Directors' recommendations, to assure full distribution of the budgeted funds and to provide the States more firm figures for their fiscal planning.

**302.5(h):** To the lead paragraph, add: "which shall include a listing of allocations to State subgrantees who shall be notified of the allocation." The intent is to provide local jurisdictions with allocation information in a timely manner for budget and planning purposes. (a county)

This suggestion is not acceptable. The annual submission document requires a listing of the subgrantees along with the amount of their allocations approved by the State. FEMA notifies the States of their total allocations immediately after the appropriation and allotment of funds. The annual submissions are

required within 60 days after notification. However, FEMA will not dictate the time that States notify their subgrantees of their allocations.

A few additional changes to the rule were made after the Notice of Proposed Rulemaking was reviewed by the public:

(1) Indian tribes are included in the definition of subgrantees in § 302.2(w) and provided for under documentation of eligibility in § 302.3.

(2) The early stages of the allocation process described in § 302.5 (c) and (d) have been simplified. Regional Offices will provide to each State its formula distribution figure for planning and negotiating purposes. That amount, or one modified in negotiation between Regional Office and the State, will be requested on the State's application. Based on the requests and the Regional Directors' recommendations, the Director will, after considering the factors in paragraph (c), issue the tentative allocations (paragraph(f)). This in effect combines the "formula distribution" and "preliminary budget allocation" steps.

The rule is changed by moving paragraph (c) to follow (e), by changing "preliminary budget allocation" to "formula distribution" in the present paragraph (d), and by changing the first sentence of paragraph (c) to read, " \* \* \* in each State, the requests of all the States, and recommendations by the Regional Directors."

(3) Section 302.5(f) has been changed to read, "in September \* \* \*" rather than "On or about September 1 \* \* \*". This will allow time to consider and review applications that are due to FEMA August 31.

#### **Cause for § 302.5 To Be Effective on Date of Publication**

Public Law 97-86 amended subsection 204(d) of the Federal Civil Defense Act of 1950, as amended, to take into consideration the areas that may be affected by natural disasters. It was effective December 1, 1981.

FEMA sought to modify its allocation procedures to reflect this statutory amendment in time for the Fiscal Year 1983 EMA allocations. The time from enactment of the amendment until the issuance of the tentative EMA allocations for Fiscal Year 1983 in September 1982 did not permit revision of the allocation method through the usual regulatory process. Instead, FEMA chose, as an interim measure for Fiscal Year 1983 only, to revise the formula simply by giving more weight to State population, since natural disasters can affect any or all parts of the States. Also, 1980 population was substituted for 1970 population. The effect of these

changes was relatively slight because the formula was applied only to the incremental increase of Fiscal Year 1983 EMA funds over FY 1982 funds and not to the entire EMA allotment.

Meanwhile, FEMA determined that the entire EMA allocation method should be reviewed and, through the regulatory process, be made more equitable, comprehensible, and manageable. A new allocation formula was included in updated EMA regulations. FEMA published an advance notice of proposed rulemaking (47 FR 14500, April 1, 1982), followed by the notice of proposed rulemaking (48 FR 27105-27112).

It is imperative that § 302.5. Allocations and Reallocations, be effective on date of publication of this rule in order that FEMA can use the revised allocation formula and procedures for FY 1984 in compliance with Pub. L. 97-86.

#### **Environmental Impact**

The regulation deals primarily with the funding of salaries and administrative expenses. The administrative actions described therein do not individually or cumulatively have a significant impact on the human environment. Hence, this regulation is considered categorically excluded from the requirements of 44 CFR Part 10, "Environmental Considerations," and no environmental documents have been prepared.

#### **Implementing Guidance.**

These regulations refer to CPG 1-3 throughout, but FEMA is continuing to rely upon actual notice, through distribution of CPG 1-3 to all participating State and local governments and requiring certification of receipt thereof.

#### **Nonapplicability**

As Federal funding to which these regulations will be applicable is less than \$100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to which the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act, which is concerned with small entities. No regulatory flexibility analysis will be prepared.

#### **CFDA Number and Title**

This program is listed in Catalog of Federal Domestic Assistance (CFDA) as Number 83.503, Emergency Management Assistance (Emergency Management

Assistance for State and Local Governments).

#### List of Subjects in 44 CFR Part 302

Civil defense, Grant programs—national defense.

Accordingly, Chapter 1 of Title 44, Code of Federal Regulations, is amended by revising part 302 to read as follows:

### PART 302—CIVIL DEFENSE STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

Sec.

302.1 Purpose.

302.2 Definitions.

302.3 Documentation of eligibility.

302.4 Merit personnel systems.

302.5 Allocations and reallocations.

302.6 Fiscal year limitation.

302.7 Use of funds, materials, supplies, equipment and personnel.

302.8 Waiver of "Single" State agencies requirements.

Authority: Sec. 401, Federal Civil Defense Act of 1950, as amended, 50 U.S.C. App. 2253; Reorganization Plan No. 3 of 1978: (3 CFR 1979 Comp., p. 329), E.O. 12148.

#### § 302.1 Purpose.

(a) The regulations in this part prescribe the requirements applicable to the Emergency Management Assistance (EMA) program for Federal financial contributions to the States, and through the States to their political subdivisions, for up to one half of the necessary and essential State and local civil defense personnel and administrative expenses, under section 205 of the Federal Civil Defense Act of 1950, as amended, and set forth the conditions under which such contributions will be made.

(b) The intent of this program is to increase civil defense operational capability at the State and local levels of government by providing Federal financial assistance so that personnel and other resources can be made available for essential planning and other administrative functions and activities required in order to accomplish this objective.

#### § 302.2 Definitions.

Except as otherwise stated or clearly apparent by context, the definitions ascribed in this section to each of the listed terms shall constitute their meaning when used in the regulations in this part. Terms not defined in this part shall have the meaning set forth in their definition, if any, in the Federal Civil Defense Act of 1950, as amended.

(a) *Act.* The Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251-*et seq.*).

#### (b) *Administrative expenses.*

Necessary and essential expenses, other than personnel expenses as defined in this section, of a grantee and its subgrantees incurred in the administration of their civil defense programs, as detailed in CPG 1-3, Federal Assistance Handbook, and in CPG 1-32, FEMA Financial Assistance Guidelines.

(c) *Annual submission.* The State's annual request for participation in the contributions program authorized by section 205 of the Act. As specified in CPG 1-3, it includes staffing patterns (including job description changes), budget requirements, and any amendments to the State administrative plan, a request for funds covering the State and its subgrantees and program statements of work for the grantee and subgrantees under the Comprehensive Cooperative Agreement.

(d) *Approval.* All approvals by the Federal Emergency Management Agency (FEMA) as grantor agency required under the regulations in this part mean prior approval in writing signed by an authorized FEMA official. When failure to obtain prior approval of an action has not resulted and is not expected to result in any failure of compliance with a substantive requirement, and approval after the fact is not contrary to law (or regulation having the effect of law), written approval after the fact may be granted at the discretion of the authorized official.

(e) *CPG 1-3.* Civil Preparedness Guide entitled "Federal Assistance Handbook," which sets forth detailed guidance on procedures that a State and, where applicable, its political subdivisions must follow in order to request financial assistance from the grantor agency. It also sets forth detailed requirements, terms, and conditions upon which financial assistance is granted under these regulations. Included are amendments by numbered changes. References to CPG 1-3 include provisions of any other volumes of the CPG series specifically referenced in CPG 1-3. Copies of the Civil Preparedness Guides and the Civil Preparedness Circulars may be ordered by FEMA Regional Offices using FEMA Form 60-8 transmitted to FEMA, P.O. Box 8181, Washington, D.C. 20024. One or more copies of CPG 1-3 have been distributed to each State and to each local government participating in the program under the regulations in this part. Copies of revisions and amendments are distributed to participating governments (addressed to the Emergency Management Coordinator) upon issuance.

#### (f) *Comprehensive Cooperative*

*Agreement (CCA).* Provides for each State a single vehicle for applying for and receiving financial assistance for several discrete FEMA programs and for organizing and reporting on emergency management objectives and accomplishments, particularly under the funded programs.

(g) *Emergency management.* Refers to the activities and measures undertaken by a State, or one of its political subdivisions, to manage a "civil defense program" as defined and provided for by the Federal Civil Defense Act of 1950, as amended, including without limitation Title V, added by Public Law 96-342, and section 207, added by Public Law 97-86. Title V calls for an improved civil defense program that includes: "(1) A program structure for the resources to be used for attack-related civil defense; (2) a program structure for the resources to be used for disaster-related civil defense; and (3) criteria and procedures under which those resources planned for attack-related civil defense and those planned for disaster-related civil defense can be used interchangeably." Thus, emergency management includes "civil defense" for and operations in either attack-related or disaster-related emergencies. Section 207 allows Federal Civil Defense Act funds to be used for disaster preparedness and response if such use "is consistent with, contributes to, and does not detract from attack-related civil defense preparedness." Also 44 CFR Part 312, Use of Civil Defense Personnel, Materials, and Facilities for Natural Disaster Purposes, provides terms and conditions for such use.

(h) *Director.* The head of the grantor agency or another official of the Agency authorized in writing by the Director to act officially on behalf of the Director.

(i) *Forms prescribed by the grantor agency.* Forms prescribed by the grantor agency are identified in CPG 1-3 and may be ordered by FEMA Regional Offices using FEMA Form 60-8 transmitted to FEMA, P.O. Box 8181, Washington, D.C. 20024.

(j) *Grantee.* A State that has received EMA funds as a result of having a State administrative plan, a statement of work, and an annual submission, all approved by the grantor agency as meeting the requirements prescribed in this part and in CPG 1-3 for necessary and essential State and local civil defense personnel and administrative expenses for a current Federal fiscal year.

(k) *Grantor agency.* The Federal Emergency Management Agency (FEMA).

(l) *Interstate civil defense authority.* Any civil defense authority established by interstate compact pursuant to section 201(g) of the Act.

(m) *Necessary and essential civil defense expenses.* Necessary and essential civil defense expenses are those required for the proper and efficient administration of the civil defense program of a grantee or a subgrantee as described in a State administrative plan and statement of work approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting other requirements for civil defense prescribed by or under provisions of the Act.

(n) *OMB Circular A-87, "Cost Principles Applicable to Grants and Contracts with State and Local Governments,"* promulgated by the Office of Management and Budget, Executive Office of the President, as published in the Federal Register (46 FR 9546) and subsequent amendments or revisions. (See Appendix B of CPG 1-3.)

(o) *OMB Circular A-102, "Uniform Administrative Requirements for Grants-in-aid to State and Local Governments,"* promulgated by the Office of Management and Budget, Executive Office of the President (42 FR 45828) including amendments or revisions as published in the Federal Register. (See Appendix A of CPG 1-3.)

(p) *Operational plans (OMB 3067-0123).* Operational plans identify the available personnel, equipment, facilities, supplies, and other resources and provide for coordinated operations to be taken throughout the State in the event of an attack or other disaster.

(q) *Personnel expenses.* Necessary and essential civil defense expenses for personnel on the approved staffing pattern of a grantee or subgrantee (including but not necessarily limited to salaries, wages, and supplementary compensation and fringe benefits) for such employees appointed in accordance with State and local government laws and regulations under a system which meets Federal merit system and other applicable Federal requirements. Such expenses must be supported by job descriptions, payrolls, time distribution records, and other documentation as detailed in CPG 1-3. Personnel compensation and other costs incurred with regard to employees who are not on the civil defense staff but whose work serves the civil defense agency (e.g., State's budget and accounting office) may be charged as civil defense expense to the extent covered therefore in a federally approved indirect cost allocation plan.

(r) *Political subdivisions.* Local governments, including but not limited to cities, towns, incorporated communities, counties or parishes, and townships.

(s) *Regional Director.* A FEMA official delegated authority to exercise specified functions as they apply to grantees and subgrantees, within the geographical area of a particular region as identified (including address) in 44 CFR Part 2.

(t) *State.* Any of the actual States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, and the territories of American Samoa, Guam, and the Virgin Islands.

(u) *State administrative plan (OMB 3067-0138).* A one-time submission with amendments as necessary to keep it current, the plan is a formal description of each participating State's total civil defense program and of related State and local laws, executive directives, rules, and plans and procedures, including personnel standards administered on a merit basis, existing operational plans, travel regulations, indirect cost allocation plans and other information necessary to reflect the total civil defense program throughout the State. The plan also includes without limitation documentation as to administrative and financial systems to assure compliance with uniform grant-in-aid administrative requirements for States and subgrantees as required under OMB Circular A-102 and with other requirements relevant to the eligibility of the State and its political subdivisions for participation in financial assistance programs for civil defense purposes. Detailed requirements are prescribed in CPG 1-3. (Also see § 302.3.)

(v) *Statement of work.* Formal identification of specific actions to be accomplished by a State and its political subdivisions during the fiscal year for which Federal funds are being requested by the State. Submission is made to the FEMA Regional Director as part of the CCA Program Narrative.

(w) *Subgrantee.* A political subdivision of a State listed in the State's annual submission (or amendments thereto) as approved by the grantor agency (including any grantor agency-approved amendments thereto) as eligible to receive a portion of the Federal financial contribution provided for use within the State. The term includes Indian tribes when the State has assumed jurisdiction pursuant to State law and tribal regulations.

### § 302.3 Documentation of eligibility.

In order to remain eligible for Federal financial contributions under the regulations in this part, each State must have on file with FEMA a current State administrative plan, an emergency operational plan for civil defense, and an annual submission (including a statement of work) which have been approved by the Regional Director as being consistent with the national plan (i.e., program) for civil defense and as meeting the requirements of the regulations in this part and CPG 1-3. A State may allocate a portion of its EMA funds to an Indian tribe as a subgrantee where the State has assumed jurisdiction pursuant to State law and tribal regulations.

(a) *State administrative plans.* Every State has a State administrative plan file with FEMA and is required to keep the plan current through amendments as necessary. Such plans and amendments shall be reviewed by the Regional Director, who will advise the State in writing as to the effect, if any, changes will have on the continued eligibility of the State and its subgrantees. The Regional Director shall not, however, approve any amendments that would result in failure of the plan to meet these criteria:

(1) Provides for and is, pursuant to State law, in effect in all political subdivision of the State, mandatory on them, and, unless waived by the Director under section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214), administered or supervised by a single State administrative agency. In demonstrating that the State administrative plan for civil defense is in effect in all political subdivisions of the State and mandatory on them, the plan shall contain references to the applicable State statutes and local ordinances, executive orders and directives, and rules and regulations at the State and local level that establish the civil defense authority, structure, plans, and procedures, including those relating to emergency operations, throughout the State.

(2) Provides assurance of nonfederal contributions at least equal to Federal funding for necessary and essential costs eligible under this program from any source consistent with State law, but not from another Federal source unless Federal law specifically authorizes the use of funds from such Federal source as part of the State's share.

(3) Provides for the development of State and local government civil defense operational plans pursuant to the standards approved by the Director.

(4) Provides for the employment by the State of full-time civil defense director or deputy director.

(5) Provides for the establishment and maintenance of methods of personnel administration in public agencies administering or supervising the civil defense program, at both the State and local government levels, in conformity with the Standards for a Merit System of Personnel Administration (5 CFR Part 900), which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648, § 2, 84 Stat. 1908) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970, as amended.

(6) Provides for the establishment of safeguards to prohibit State and local government employees from using their positions for a purpose that is or gives the appearance of being motivated by desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(7) Provides that the State shall make such reports (including without limitation financial reports) in such form and content as the Director may require.

(8) Provides that the State and all subgrantees shall retain, in accordance with OMB Circular A-102, and make available to duly authorized representatives of the Director and the U.S. Comptroller General all books, records, and papers pertinent to the grant program for the purpose of making audits, examinations, excerpts, and transcripts necessary to conduct audits.

(9) Provides for establishment and maintenance of a financial management system of grant-supported activities of the State and all subgrantees which meets the federally prescribed standards promulgated in "Standards for Grantee Financial Management Systems," Attachment G of OMB Circular A-102.

(10) Provides for establishment and maintenance of procedures for monitoring and reporting grant program and project performance of the State and its subgrantees which meet the federally prescribed standards promulgated in Attachment I of OMB Circular A-102.

(11) Provides for the establishment and maintenance at the State level and by subgrantees of property management systems in accordance with the federally prescribed standards set forth in Attachment N of OMB Circular A-102.

(12) Provides for the establishment and maintenance at the State level and by subgrantees of systems for the procurement of supplies, equipment, construction, and other services, with the assistance of grant funds, in

accordance with federally prescribed standards set forth in Attachment O of OMB Circular A-102.

(13) Provides for disbursement of the appropriate share of the Federal grant to the State's subgrantees in accordance with requirements detailed in CPG 1-3.

(14) Provides for the State's supervision and review of the civil defense plans, programs, and operations of its subgrantees to obtain conformity and compliance with Federal requirements and goals set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(15) Contains a Statement of Compliance with grantor agency regulations relating to nondiscrimination in FEMA programs (see 44 CFR Part 7 and CPG 1-9, Nondiscrimination in Federally Assisted Programs of FEMA).

(16) Provides for timely submission to the appropriate Regional Director of amendments to the administrative plan as necessary to reflect the current laws, regulation, criteria, plans, methods, practices, and procedures for administration of the State's civil defense program and those of its subgrantees.

(17) Conforms to other Federal standards and requirements set forth or referenced in the regulations in this part and as detailed in CPG 1-3.

(18) Provides for performance of independent organizationwide audits by State and local governments that receive EMA funds of their financial operations, including compliance with certain provisions of Federal law and regulation in accordance with Attachment P of OMB Circular A 102.

(b) *Emergency operational plans.* Each participating State shall have an emergency operational plan approved by the Regional Director or a complying with the criteria therefor set forth in this part and in CPG 1-3, which plan provides for coordinated actions to be undertaken throughout the State when the attack-caused or other major emergencies occur. Included are the basic operational plans of the State and the operational plans for each department of the State government which has an emergency mission. In addition, each subgrantee shall have a local operational plan which conforms with the criteria therefor set forth in CPG 1-3 and CPG 1-5 "Objectives for Local Civil Preparedness" and which has been approved by the local chief executive or other authorized official and accepted by the Governor or other authorized State official as being consistent with State's operational plan.

(Approved by Office of Management and Budget, Control Number 3067-0123)

(c) *Annual submission.* Each State should include in its annual CCA application the amount of EMA funding requested (see § 302.5(c)). In order to participate for a particular Federal fiscal year, however, each State must also, within 60 days of receipt or notice of a formal allocation made pursuant to the criteria set forth in § 302.5 and in accordance with procedures and criteria specified in CPG 1-3, submit to the Regional Director an approvable annual submission which includes:

(1) A request or amended request for a financial contribution from FEMA in a specified amount for civil defense personnel and administrative expenses; (see § 302.5 (d)-(h)).

(2) Unless previously submitted for the particular Federal fiscal year, a statement of work for the State and proposed subgrantees or amendments to a statement of work previously submitted under the CCA.

(3) Staffing patterns (including new or revised job descriptions not previously submitted) on forms prescribed by FEMA for the civil defense organizations of the State and proposed subgrantees; and

(4) Any amendments to the State administrative plan required to reflect current status.

(d) *Approval of State administrative plan and annual submission.* If the State administrative plan and the annual submission are determined to be approvable, the Regional Director will so notify the State in writing. The State administrative plan is a one-time submission. Unless amendments are necessary to meet Federal standards prescribed in the regulations in this part or in CPG 1-3 or to reflect changes in the State's administrative structure, procedures, criteria, or activities, or unless a portion were conditionally approved by the Regional Director as provided for in paragraph (e) of this section, no approval regarding the State administrative plan will be required for a State which participated for the preceding Federal fiscal year.

(e) *Agreement for contribution.* Approval pursuant to procedures and criteria described in this part and in CPG 1-3 of an annual submission of a State whose administrative plan is approved and current shall constitute agreement between FEMA and the State as grantee for its participation and that of its subgrantees in this program during the Federal fiscal year covered by the approved annual submission on the basis of the requirements and conditions prescribed in this part, in CPG 1-3, and in other federally promulgated criteria referenced in this part. Refusal or failure

to comply with such requirements and conditions may result in the grantor agency cancelling, terminating, or suspending the grant, in whole or in part, and refraining from extending any further assistance to the grantee or subgrantee until satisfactory assurance of future compliance has been received.

(f) *Disapproval or conditional approval.* If a State's administrative plan or annual submission is disapproved, the Regional Director will advise the State in writing, including the reasons for such disapproval and the revisions required for approval. The State shall have 30 days from date of such notification in which to submit its revisions. In the event more time is required in which to place the revisions into effect, the Regional Director may conditionally approve the State administrative plan or annual submission subject to the specified conditions to be met within a specified time, as agreed by the State and FEMA.

(g) *Appeals.* (1) Appeal from a Regional Director's disapproval of a State administrative plan or an annual submission or other final action as unjustified under the criteria in CPG 1-3 may be made by letter to the Associate Director, State and Local Programs and Support (FEMA), signed by an authorized State official and submitted through the Regional Director. Such appeal letter shall be mailed or otherwise transmitted so as to reach the Regional Director within 30 days after receipt of the notification of disapproval. Failure to file its appeal on time may result in withdrawal of the State's allocation and the proposed funding being reallocated by the Director.

(2) A local jurisdiction that regards the final action on its subgrant made by a State as unjustified under the criteria in CPG 1-3 may submit an appeal through the State to the Regional Director. Upon receipt of such an appeal, the Regional Director shall forward the letter, together with all available pertinent documentation from the Regional Director's files and any additional documentation submitted by the local jurisdiction in support of its appeal, to the Associate Director, State and Local Programs and Support, for review and determination. The appeal shall contain all of the exceptions being taken by the State or local jurisdiction, and no exceptions will be determined piecemeal.

(3) No portion of the appellant State's allocation shall be reallocated by FEMA, and no portion of a local jurisdiction's allocation shall be reallocated by the State, pending determination of its appeal by the

Director. The State and local jurisdiction (if applicable) will be notified in writing of the Director's decision, including a statement of the reasons therefor.

(Approved by Office of Management and Budget under Control Number 3067-0138)

#### § 302.4 Merit personnel systems.

(a) *Background.* Section 208 of the Intergovernmental Personnel Act, as amended (42 U.S.C. 4728) authorizes Federal agencies to require, as a condition of participation in Federal assistance programs, systems of a personnel administration consistent with personnel standards prescribed by the Office of Personnel Management (OPM). OPM has promulgated Standards for a System of Personnel Administration (5 CFR Part 900) which prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of grant programs. OPM has approved FEMA adoption of these standards by the regulations in this part.

(b) *Standard.* Participation by each grantee and each subgrantee under the program covered in this part is subject to compliance with the following conditions regarding merit personnel systems:

Methods of personnel administration will be established and maintained in public agencies administering or supervising the administration of the civil defense program in conformity with the Standards for a Merit System of Personnel Administration 5 CFR Part 900, which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648 Section 2, 84 Stat. 1909) prescribed by the Office of Personnel Management pursuant to Section 208 of the Intergovernmental Personnel Act of 1970 as amended.

Section 302.3(a)(5) of this part provides, in part, that State administrative plans that fail to provide for fulfilling this condition are not approvable.

#### § 302.5 Allocations and reallocations.

(a) The Director shall allocate the entire amount of funds available for the purposes of this program from the appropriation for each fiscal year. The allocation made to each State represents the total amount of funds available to pay the Federal share of necessary and essential civil defense personnel and administrative expenses of the State and its participating subdivisions during the fiscal year.

(b) The first calculation for developing the allocation for each State will be a formula distribution in accordance with section 205(d) of the Act, made by applying the following percentages to the total sum of Emergency Management

Assistance in the President's budget request to Congress:

(1) Fifty (50) percent will be allocated on the basis of the prior-year State allocations, in fulfillment of the statutory requirement to give due regard to "the relative state of development of civil defense readiness of the State" (State and local levels).

(2) Thirty-three (33) percent will be allocated on the basis of the ratio of the State's population to the national population (50 States, District of Columbia, and Puerto Rico), in fulfillment of the statutory requirements to give due regard to "population" and to "the criticality of target and support areas and the areas which may be affected by natural disasters with respect to the development of the total civil defense readiness of the Nation."

(3) Ten (10) percent will be allocated on the basis of the State's population in EMA participant jurisdictions (county or municipal) as a percentage of the State's total population, in fulfillment of the statutory requirement to give due regard to "the relative state of development of the civil defense readiness of the State" (local level).

(4) Five (5) percent will be divided equally among the 50 States, the District of Columbia, and Puerto Rico, in fulfillment of the statutory requirement to give due regard to "the relative state of development of civil defense readiness of the State" (State level).

(5) In consonance with the statutory provision allowing the Director to prescribe other factors concerning the State allocations, the remaining two (2) percent will be held temporarily in reserve, to be used first to fund the four territories of the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. Conditions peculiar to those areas make strict application of the mathematical formula in § 302.5(b) inequitable. Therefore, the Director will consider prior-year allocations, percentage of total United States population, and the factors set out in § 302.5(c) (1), (2), (4) and (5) in determining their allocations. The remaining balance of the reserve fund will constitute a supplemental fund from which the Director will consider State requests for additional funding and the needs of any interstate civil defense authorities. Certain standards applicable to the allocation of the reserve fund will be set forth in Civil Preparedness Guide (CPG) 1-3.

(c) For initial planning purposes only, each State will then be informed of the figure by the Regional Director. The State will base its initial EMA



application upon that figure but may request a smaller amount or with appropriate justification a larger amount.

(d) The amount requested by the State shall not exceed 50 percent of its estimate of necessary and essential State and local personnel and administrative expenses for the fiscal year.

(e) The formula distribution shall be reviewed and evaluated, and adjusted as appropriate, by the Director, based on the current situation in each State, the requests of all States, and recommendations by the Regional Directors. The Director will consider the following five factors:

(1) The ability of the State and its subgrantees to effectively expend such an amount for necessary and essential civil defense personnel and administrative purposes. Past performance is a factor in this determination.

(2) Special circumstances existing in the State at the time of allocating which require unusual expenditures for civil defense.

(3) Conditions peculiar to the State which make strict application of mathematical formula inequitable either to that State or other States.

(4) The relative cost of civil defense personnel and administrative services in that State; that is, whether such costs are considerably above or below the national average for similar services and expenses.

(5) Substantial changes in the civil defense readiness of the State not reflected by its recent civil defense expenditures.

(f) In September of each year, based on applications received and recommendations by the Regional Directors, the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or subject to, appropriation by Congress and allotment of the funds. This allocation for each State can include any additional amounts from the reserve portion of the EMA funds.

(h) Based on, and within 60 days after notification of, its formal allocation, the State shall provide to the Regional Director an annual submission in compliance with the criteria prescribed

therefor by the regulations in this part and by CPG 1-3.

(i) In the event a State fails to provide an approvable annual submission on time, the Director may reallocate that State's share of the funds or portions thereof among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(j) In addition, the Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission.

#### **§ 302.6 Fiscal year limitation.**

Federal appropriations for the program covered by the regulations in this part are limited for obligation on a Federal fiscal year basis. Each annual submission (or amendment thereto) which results in a change in scope (e.g., an increase in the amount of funds other than a cost overrun) must be approved during the Federal Fiscal year for which the funds to be charged were appropriated. Valid expenses incurred by a State or its subgrantee during the fiscal year but before obligation by FEMA of funds under this program may qualify for payment of a Federal financial contribution out of the funds subsequently appropriated for that fiscal year.

#### **§ 302.7 Use of funds, materials, supplies, equipment, and personnel.**

Financial contributions provided under the authority of Section 205 of the Act are provided for necessary and essential State and local civil defense personnel and administrative expenses as prescribed by the regulations in this part and the provisions of CPG 1-3, and are obligated only on the basis of documentation justifying such need.

(a) *Emergencies.* In addition to such civil defense use, Federal funds obligated under a grantee's approved annual submission may be used, to the extent and under such terms and conditions as prescribed by the Director in CPG 1-3, for providing emergency assistance, including the use of civil defense personnel, organizational equipment, materials, and facilities, in preparation for and response to actual attack-related events or natural disasters (including manmade catastrophies).

(b) *Limitations.* Section 207 of the Act allows use of funds under the Act, including those for this program, for natural (including manmade) disaster preparedness and response purposes only to the extent that such use is

consistent with, contributes to, and does not detract from attack-related preparedness (reference 44 CFR Part 312).

#### **§ 302.8 Waiver of "single" State agency requirements.**

Section 205 of the Act requires that plans for civil defense of the United States be administered or supervised by a single State agency (50 U.S.C. App. 2286). Notwithstanding such law, section 204 of the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4214) provides authority for the Director as head of the grantor agency, upon the State's request, to waive the single State agency requirement and to approve other State administrative structure or arrangements, upon adequate showing that the requirement prevents the establishment of the most effective and efficient organizational arrangements within the State government. First, however, the Director must have found that the objectives of the Act (50 U.S.C. App. 2251-2297) will not be endangered by the use of such other State structure or arrangements. Attachment D of OMB Circular A-102 requires that such requests be given expeditious handling by the grantor agency and that, whenever possible, an affirmative response be made.

Dated: September 22, 1983.

Jeffrey S. Bragg,

Executive Deputy Director.

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BILLING CODE 6716-01-M



the State of West Virginia on June 24, 1984.

(B) Letter of December 14, 1985, in which the West Virginia Air Pollutant Control Commission committed to comply with the July 8, 1985 rulemaking notice concerning stack heights in its PSD permitting.

a. In § 52.2528 paragraphs (a) and (b) are revised to read as follows:

**§ 52.2528 Significant Deterioration of Air Quality.**

(a) The requirements of Sections 100 through 165 of the Clean Air Act are met since the plan includes approvable procedures for the Prevention of Significant Air Quality Deterioration.

(b) Regulations for Preventing Significant Deterioration of Air Quality the provisions of §§ 52.21(p) (4), (5), (6) and (7) are hereby incorporated and made a part of the applicable state plan for the state of West Virginia.

[FR Doc. 86-6740 Filed 4-10-86; 8:45 am]

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**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**

**44 CFR Part 302**

**Civil Defense; State and Local  
Emergency Management Assistance  
Program (EMA)**

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

**ACTION:** Final rule.

**SUMMARY:** This final rule makes two substantive changes and other minor changes to 44 CFR Part 302.

One change is to rename and redefine operational plans as emergency operations plans (EOP's) and to add the requirement for EOP's to conform with the requirements for plan content as contained in Civil Preparedness Guide (CPG) 1-8, "Guide for the Development of State and Local Emergency Operations Plans," and CPG 1-8A, "Guide for the Review of State and Local Emergency Operations Plans."

The second change is to permit States to submit preliminary annual submission documents in amounts not to exceed their tentative allocation amounts and for those preliminary annual submissions to be approved as final annual submissions under certain prescribed conditions.

The change in procedures will allow States to accelerate the process for receiving FEMA approval of documents of obligation for all or a portion of their annual EMA fund allocation upon

appropriation by Congress and allotment of the funds.

**EFFECTIVE DATE:** This rule is effective May 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** John McKay, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202-646-4252).

**SUPPLEMENTARY INFORMATION:** On July 8, 1985, FEMA published for comment in the Federal Register (50 FR 27827-27828), with corrections on July 17, 1985 (50 FR 28059), and July 26, 1985 (50 FR 30480), a notice of proposed rulemaking on 44 CFR 302 under the Federal Civil Defense Act of 1950, as amended.

The change in procedures will allow States to accelerate the process for receiving FEMA approval of documents of obligation for all or a portion of their annual EMA fund allocation upon appropriation by Congress and allotment of the funds. The last sentence in § 302.5b(5) "Allocations and reallocations" is being revised. Rather than "certain standards applicable to the allocation of the reserve fund" being set forth in CPG 1-3 they will be promulgated annually. This change is being made based on the premise that the amount of the EMA appropriation will likely vary from year to year (and consequently the amount of the reserve fund) as will circumstances in the various States; therefore, the Director should have the option to annually determine the basis for distribution of the reserve fund in accordance with current information as to civil defense needs.

**Implementing Guidance**

These regulations refer to CPG 1-3 throughout and the fact that it is available from FEMA regional offices. FEMA is continuing to distribute CPG 1-3 and amendments to all participating State and local governments. FEMA expects to publish CPG 1-3 in the Federal Register in the future.

**Nonapplicability**

The regulation is applicable to States to which the funding is made available, and thus is not subject to the requirements of the Regulatory Flexibility Act to prepare regulatory flexibility analyses. That act is concerned with small entities. It is hereby certified that the rule change will not have a significant economic impact on a substantial number of small entities. This regulation is not considered to be a major rule under the terms of Executive Order 12291 as the rule change will not have an annual effect on the economy of \$100,000,000 or

more, nor will it have a major effect on costs or prices. Therefore, no regulatory flexibility analysis will be prepared.

**Collection of Information**

Sections 302.3 and 302.5 concern documentation of eligibility. These sections of the rule contain collection of information requirements which have been approved by Office of Management and Budget under the provisions of section 3504(h) of the Paperwork Reduction Act and have been assigned OMB control numbers 3087-0123 and 0138.

**Comments and Considerations**

A total of 24 responses with comments were received: one each from FEMA Regions VII and VIII and 22 from State officials. The substantive comments received are paraphrased below, in order of the pertinent sections or paragraphs of the rule, along with FEMA's response.

**Nonapplicability**

One State and one FEMA region questioned the statement that the rule was not a major rule requiring development of a regulatory analysis under E.O. 12291. The commentators claimed that the State share of EMA funding should be included along with the Federal share and that when these funds are taken into account the total program and the total effect on the economy exceed \$100,000,000.

However, the test for determining the effect on the economy is the effect which the rule changes have on the economy, not the cost of the program involved. The effect of the rule changes, to the extent these can be measured, does not exceed \$100,000,000. In this respect the applicability section of the preamble to the notice of proposed rulemaking is revised, and it has been restated above.

Section 302.2(p): Nine States and one FEMA region recommended changing "Emergency Operations Plan (EOP)" to read "Emergency Management Plan." The reasons given were that the EOP definition is too narrow and does not reflect an integrated emergency management approach; it places too much emphasis on operations at the expense of other phases of emergency management, i.e., mitigation, preparedness, response and recovery. Two States and one FEMA region concurred in the proposed rule change and definition for EOP's.

An EOP focuses on how a jurisdiction will respond to disaster events. Other plans may be used to deal with the predisaster activities associated with

mitigation and the post-disaster activities related to long-term economic and social recovery. The title "Emergency Operations Plan" and the definition contained in paragraph 302.2(p) of the proposed rule are therefore retained as being descriptive of the plan that is required as an eligibility document for the EMA program.

Section 302.3(b)(1): Sixteen States and one FEMA region objected to the provision for the "approval" of State EOP's by FEMA.

The designated State official approves those plans for his purposes, including conformance with State laws, requirements, and criteria. FEMA approves those plans for compliance with the Federal Civil Defense Act of 1950, as amended, and with applicable FEMA regulations.

Section 205 of the act reads in part as follows:

**Contributions for Personnel and Administrative Expenses**

To further assist in carrying out the purposes of this Act, the Administrator is authorized to make financial contributions to the States (including interstate civil defense authorities established pursuant to section 301(g) of this Act) for necessary and essential State and local civil defense personnel and administrative expenses, on the basis of approved plans (which shall be consistent with the national plan for civil defense approved by the Administrator) for the civil defense of the States. . . .

(a) Plans submitted under the section shall—

(3) provide for the development of State and local civil defense operational plans, pursuant to standards approved by the Administrator.

In the case of State EOP's, the requirement for FEMA approval has been incorporated in governing regulations since the advent of the program in Fiscal Year 1961. The current EMA regulation, 44 CFR 302, published in the Federal Register September 28, 1983, includes the same requirement. The proposed rule does not change the existing, long-standing requirements mandated by the authorizing legislation for Federal approval of State plans.

Section 302.3(b)(2): Twelve States and one FEMA region disagreed with the words "conforms with" in line two relating to local EOP's and criteria contained in various civil preparedness guides.

Those words have been changed to "conforms with the requirements for plan content as set forth in CPG 1-3, CPG 1-8 and CPG 1-8A" in the final rule. This change accommodates the

objections to EOP format being specified and/or mandated by the rule.

Seven States and two FEMA regions expressed the opinion that CPG 1-8, "Guide for the Development of State and Local Emergency Operations Plans," and CPG 1-8A, "Guide for the Review of State and Local Emergency Operations Plans," should not be cited in the rule for various reasons: their contents are contrary to the statutes of two States; both CPG's are primarily oriented toward large cities and counties, not State governments; and the CPG's had not been published.

Section 2 of the Federal Civil Defense Act of 1950, as amended, declares it is the policy and intent of Congress that the responsibility for civil defense shall be vested jointly in the Federal Government and the several States and their political subdivisions. The Federal role is to provide direction, coordination, guidance, and the assistance authorized by the act.

Civil defense is defined by the act to mean activities and measures designed or undertaken to minimize the effect upon the civilian population of the United States and to deal with the immediate emergency conditions created by an attack, natural disaster, or manmade catastrophe (50 U.S.C. APP. 2252(a)).

Thus, in an effort to enhance the civil defense readiness of the Nation as a whole, we are standardizing in the rule the definition of an EOP and are prescribing the review, updating, and and exercising of existing EOP's.

Our intention with CPG 1-8 is not to mandate an EOP format or title but to specify areas of content. CPG 1-8A is the checklist for content.

It was fully expected that CPG's 1-8 and 1-8A would be published and distributed to all EMA participating State and local jurisdictions by the dates contained in the proposed rule. That process was delayed but has been accomplished.

While none of the commentators objected specifically to the reference to CPG 1-8, "Objectives for Local Civil Preparedness," it was determined to remove the requirement for local EOP's to conform with CPG 1-8 since CPG 1-8 contains more current guidance for the development of local, as well as State, EOP's.

Section 302.3(f) through (m). Allocations and reallocations. One FEMA region and one State protested the removal of the phrase in the first sentence, "based on applications received and recommendations by the Regional Directors." This phrase was inadvertently omitted during the typing of the proposed rule and has been

reinserted in the final rule. There was no intention of removing the Regional Directors from this process.

One FEMA region and one State concurred with submitting annual submission documents in amounts not to exceed their tentative allocation amounts *providing that tentative allocation amounts were increased over the previous year to allow for inflation and acquiring new eligible participants.*

The EMA tentative allocations to States are calculated by applying the formula factors contained in 44 CFR 302.5(b) (1) through (4) to the amounts budgeted annually for EMA, while withholding the supplement fund (2 percent reserve less the total of the amounts used for the insular areas) and based on applications received, regional recommendations made, and adjustments to the planning figures as appropriate. The formal allocations are made based on appropriation by Congress and allotment of the funds. This allocation for each State may include an additional amount from the reserve portion of the EMA funds. There is no provision in the EMA regulation that guarantees an increase in States' tentative allocations from year to year for any purpose. The amount of each State's tentative allocation is primarily dependent on the total amount appropriated for EMA annually by Congress.

One FEMA region and one State suggested that in lieu of the term "primary annual submission" the term "preliminary annual submission" be used throughout as a grammatical change more appropriately related to the term "final annual submission." This suggestion has been adopted.

One FEMA region and one State suggested that consideration be given to adopting language that would require the final annual submission to be due January 1 of each year in order to coincide with the fiscal year and budget cycle for many local government FMA participants.

Section 205 of the Federal Civil Defense Act of 1950, as amended, entitled "Contributions for Personnel and Administrative Expenses," authorizes the EMA Program. It states that in the event a State fails to submit an approvable plan (defined in 44 CFR 302.3(c) as *annual submission*), as required in that section within sixty days after the Director (of FEMA) notifies the States of their allocations, the Director may reallocate such funds, or portions thereof, among the States in such amounts as, in his judgment, will best assure the adequate development of the civil defense capability of the

Nation. Therefore, the timing for requiring receipt of the annual submission documentation is contingent on the timing of the annual FEMA appropriation by Congress and allotment of the funds.

#### Implementing Guidance

One State questioned the authority by which FEMA mandates the certification of receipt of CPG 1-3 by all (EMA participant) State and local governments.

Under section 205 of the Federal Civil Defense Act of 1950, as amended, the Director (FEMA) has authority to make financial contributions to the States for necessary and essential State and local civil defense expenses on the basis of approved plans and such other terms and conditions as he may deem necessary and proper. One of the methods of promulgating such other terms and conditions is to issue guidance material (e.g., CPG 1-3) which is delivered to the States and participating political subdivisions in order to inform them as to the terms of the grants. The guidance material fleshes out in detail the skeletal criteria of the regulations published in the Federal Register and in the Code of Federal Regulations. This method of providing guidance in furtherance of, and detailing the criteria of, the regulations has been used since the inception of the civil defense grant programs. As in the case of the regulations, the manual provisions may be amended, but revised criteria are not applied retroactively. FEMA has determined that CPG 1-3 and any subsequent changes thereto will be published in the Federal Register, thus providing constructive (legal) notice to the public of its contents. This action precludes the requirement for submission of individual receipt forms to FEMA when the CPG 1-3 and changes thereto are issued.

One State expressed that the amendment serves a minor purpose; that it provides States that do not utilize all of their tentative allocation with a vehicle in the form of a primary submission to adjust to any overage in allocation and merely serves as a more immediate notice to FEMA of funds available for reallocation to other States along with the reserve. There was the question as to the juncture when this reallocation of unneeded funds takes place. The question was raised also as to what vehicle is provided States with initial funding needs above the formal allocation. The statement was made that paragraph (i) is too restrictive to this process and that, accordingly, the amendment gives the Director an

excessive amount of discretionary authority as to the reserve fund use.

As to the point that the amendment is a minor one, some States may consider it to be to their advantage to be able to have their primary (or preliminary) annual submission approved, upon the appropriation becoming available, as the obligating document in an appropriate amount not to exceed the State's formal allocation. This allows them to receive funding in the approved amount for use during the 90-day interim in which they have to submit their final submission (which may or may not differ from their preliminary one). States are requested to indicate they will not be using the total of their State formula distribution (planning figures) prior to formulation of the tentative allocations. Any excesses so indicated are redistributed to other States that have indicated additional funding needs at that time. The States may apply for a portion of the reserve fund after being notified of their tentative allocation amounts. The total amount of EMA funds appropriated annually by Congress, including the reserve fund, must be allocated when the formal allocations are issued. Of course, even after approval of its final submission, a State may file to amend it to accommodate a request for additional funds turned back by other States as surplus to their needs. As to the Director's discretionary authority over the reserve fund, subsections 205(d) and (e) of the Federal Civil Defense Act, as amended, and paragraph 302.5. Allocations and reallocations, contain the authority for the Director to determine and make the State EMA allocations based on certain factors. The allocation formula that includes the 2 percent reserve is contained in paragraph 302.5(b).

#### List of Subjects in 44 CFR Part 302

Civil defense, Grants programs, National defense.

Accordingly, Chapter I, Subchapter E, part 302, Code of Federal Regulations, is amended as follows:

#### PART 302—CIVIL DEFENSE—STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)

1. The authority citation for Part 302 is revised to read as follows:

Authority: 50 U.S.C. App. 2251 et seq. Reorganization Plan No. 3 of 1978; E.O. 12148.

#### § 302.2 (Amended)

2. In § 302.2, paragraph (n) is amended by removing the entire parenthetical phrase at the end of the paragraph and

adding "(See CPG 1-32, Financial Assistance Guidelines)."

3. In § 302.2, paragraph (o) is amended by removing the entire parenthetical phrase at the end of the paragraph and adding "(See CPG 1-32, Financial Assistance Guidelines)."

4. In § 302.2, paragraph (p) is revised to read as follows:

(p) *Emergency Operations Plan (EOP).* State or local government Emergency Operations Plans identify the available personnel, equipment, facilities, supplies, and other resources in the jurisdiction and states the method or scheme for coordinated actions to be taken by individuals and government services in the event of natural, manmade and attack-related disasters.

5. In 302.2, paragraph (u) is amended by removing from the first sentence "existing operational plans" and adding "updated emergency operations plans" in place thereof.

#### § 302.3 (Amended)

6. In § 302.3, the introductory paragraph is amended by removing "emergency operational plan" and adding "emergency operations plan" in place thereof.

7. In 302.3 paragraph (a)(3) is amended by removing "operational plans" and adding "emergency operations plans" in place thereof.

8. In § 302.3, paragraph (a)(15) is amended by removing, "and CPG 1-8, Non-discrimination in Federally Assisted Programs of FEMA."

9. In § 302.3, paragraph (a)(18) is amended by removing, "in accordance with Attachment P of OMB Circular A-102."

10. In § 302.3, paragraph (b) is revised to read as follows:

(b) *Emergency Operations Plans (EOP's).* (1) Each participating State shall have an EOP approved by the Regional Director and conforming with the requirements for plan content set forth in this part and in CPG 1-3, and in CPG 1-8 "Guide for the Development of State and Local Emergency Operations Plans" and in CPG 1-8A, "Guide for the Review of State and Local Emergency Operations Plans," which plan must provide for coordinated actions to be undertaken throughout the State in the event of attack and in the event of other disasters.

(2) Each subgrantee jurisdiction shall have a local EOP which conforms with the requirements for plan content as set forth in CPG 1-3 and CPG 1-8 and CPG 1-8A, and which has been approved by the local chief executive or other authorized official and accepted by the

Governor or other authorized State official as being consistent with the State's EOP.

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**§ 302.5 (Amended)**

11. In § 302.5, paragraph (b)(5) is amended by revising the last sentence to read as follows: "Certain factors to be applicable to the allocation of the reserve fund will be determined and promulgated annually, based upon how such amount may best be used to increase the civil defense capability of the Nation."

• 12. In § 302.5, paragraphs (f) through (j) are revised and paragraphs (k) through (m) are added

• • • • •  
 (f) In September of each year, based on applications received and recommendations by the Regional Directors, the Director will make a tentative allocation to the States. This will include adjustments for States that have indicated they will not be using the total of the formula distribution amount. States can then revise their earlier plans and applications to more nearly reflect the level of funding expected to become available.

(g) A State may provide to the Regional Director a preliminary annual submission in an amount not to exceed its tentative allocation.

(h) By September 30 (or as soon thereafter as feasible), the Director will make a formal allocation based on, or

subject to, appropriation by Congress and allotment of the funds. This allocation for each State may include any additional amounts from the reserve portion of the EMA funds, and shall be in accordance with the regulations in this part and CPG 1-3.

(i) Upon the appropriation becoming available, and if requested by a State, the Regional Director may approve such State's preliminary annual submission (if found to meet all requirements in this part and CPG 1-3) in an appropriate amount which does not exceed the amount of the State's share of the Director's formal allocation of the Federal appropriation. An award document obligating Federal funds on the basis of the approved preliminary annual submission may be executed in accordance with the provisions of CPG 1-3.

(j) Based on and within 60 days after notification of its formal allocation, each State must provide to the Regional Director a final annual submission which meets all requirements in this part and CPG 1-3. If no changes are necessary, a State and the Regional Director may adopt in writing the State's preliminary annual submission as its final annual submission. If no award document was executed based on a State's preliminary annual submission, such document will be executed on the basis of that State's approved final annual submission.

(k) With regard to any State whose award document was executed pursuant

to a preliminary annual submission covering only part of its formal allocation, upon approval (by the Regional Director) of the final annual submission (including a revised statement of work supporting the additional funding request) the Regional Director shall execute an amended award document obligating the balance of such State's formal allocation.

(l) In the event a State fails to provide an approvable final annual submission on time, the Director may reallocate that State's share of the funds or portions thereof as appropriate among the other States in such amounts as in the Director's judgment will best assure adequate development of the civil defense capability of the Nation.

(m) In addition, the Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

**§ 302.8 (Amended)**

13. 302.8, is amended by removing "50 U.S.C. App. 2251-2297" and adding in place thereof "50 U.S.C. App. 2251 et seq."

Dated: January 21, 1986.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc 86-7862 Filed 4-10-86; 8:45 am]

BILLING CODE 6710-01-M

## Appendix A

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**Federal Register / Vol. 51, No. 234 / Friday, December 5, 1986 / Rules and Regulations 43923**

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**FEDERAL EMERGENCY  
MANAGEMENT AGENCY****44 CFR Part 302****Civil Defense; State and Local  
Emergency Management Assistance  
Program (EMA)****AGENCY:** Federal Emergency  
Management Agency (FEMA).**ACTION:** Final rule.

**SUMMARY:** This final rule delegates to the FEMA Regional Directors authority to reallocate surplus EMA funds to States within their regions during the first 9 months of each fiscal year.

**EFFECTIVE DATE:** December 5, 1986.

**FOR FURTHER INFORMATION CONTACT:** John McKay, Office of Emergency Management Programs, Federal Emergency Management Agency, Washington, DC 20472 (202-646-4252).

**SUPPLEMENTARY INFORMATION:** The change in procedures will allow a FEMA Regional Director the authority for the first 9 months of each fiscal year to reallocate unused portions of a State's EMA allocation among the other States as, in his/her best judgment, will best assure the adequate development of the civil defense capability of the Nation. This delegation is additional to, and does not replace that of, the Associate Director for State and Local Programs and Support (44 CFR 2.61(j)(7)).

The Regional Directors need not apply the same formula for the reallocations as is done for the original allocations by the Director. Therefore, the paragraphs (l) and (m) in § 302.5 are to be revised to accommodate the redelegation from the Director to the Regional Directors to reallocate EMA funds under certain conditions.

**Nonapplicability**

As Federal funding to which these regulations will be applicable is less than \$100,000,000 annually, the regulation is not considered to be a major regulation requiring a regulatory analysis under Executive Order 12291. The regulation also is applicable to States to which the funding is made available and, thus, is not subject to the requirements of the Regulatory Flexibility Act which is concerned with small entities. No regulatory flexibility analysis will be prepared. This amendment does not call for any collection of information requiring clearance under section 3504(h) of the Paperwork Reduction Act and, as the regulation is administrative in character, there is no requirement for environmental clearance.

**Comments and Considerations**

A total of eight responses were received; six were from States and two from territories. Five States and the two territories expressed total agreement with the proposed rule.

One State disagreed with the delegation to the Regional Directors based on the premise that allowing regions to reallocate EMA funds would not get funds where they are most needed.

EMA is one of the grant programs administered by FEMA through the Comprehensive Cooperative Agreement (CCA) to the States. The authority to reallocate funds to States within the regions for the first 9 months of the fiscal year has been delegated to the FEMA Regional Directors for the other CCA grant programs beginning in FY 1987. This final rule will make that authority consistent for all CCA programs and enhance fiscal management of all the programs.

One State recommended that the authority for the Regional Directors to reallocate EMA funds to States within their regions be extended at least through August 15 of each fiscal year.

Again, we feel that the delegation of reallocation authority to the Regional Directors should be consistent for all of the CCA programs. Also, in the case of the EMA program, the time required for FEMA Headquarters to solicit information from the States concerning surplus funds and additional funding requirements, and then to process the necessary reallocation documentation dictates the provision for the reallocation authority to revert to headquarters for the final 3 months of the fiscal year. The authority during that period of time offers the opportunity for alleviating funding inequities among the States that may have existed earlier in the fiscal year.

**List of Subjects in 44 CFR Part 302**

Civil defense, Grants programs, National defense.

Accordingly, it is proposed to amend 44 CFR, Chapter 1, Subchapter E, Part 302, Code of Federal Regulations, as follows:

**PART 302—CIVIL DEFENSE—STATE AND LOCAL EMERGENCY MANAGEMENT ASSISTANCE PROGRAM (EMA)**

1. The authority citation of Part 302 continues to read as follows:

Authority: 50 U.S.C. App. 2251 et seq.; Reorganization Plan No. 3 of 1978, E.O. 12148.

**§ 302.5 [Amended]**

2. In § 302.5, paragraphs (l) and (m) are revised, and new paragraphs (n) and (o) are added.

(l) After being advised of its annual formal allocation, if a State fails to submit, within 60 days, an approvable annual submission in the amount of its allocation, the Regional Director may reallocate the unused portion to other States in the region in such amounts as in his/her judgment will best assure adequate development of the civil defense capability of the Nation. The exception to this authority is in the event a State, or local jurisdiction, refuses to participate in attack preparedness activities. EMA funds withheld or returned for that reason are to be released to headquarters for reallocation on a national basis. In addition, the Regional Director may from time to time reallocate the amounts released by a State from its allocation as no longer being required for utilization in accordance with an approved annual submission and award document.

(m) Immediate notice to the headquarters EMA Program Manager of State reallocations is required in the form of copies of EMA-approved Annual Submission amendment documents, accompanied by copies of assistance award/amendment documents signed by regional and State authorized officials of both the releasing and recipient States.

(n) There is no dollar ceiling on the amount of funds that may be reallocated among States in a region. However, at any time that there are funds surplus to the eligible needs of the States within a region, those funds should be promptly released to headquarters for reallocation to other States with unfunded additional requirements.

(o) On July 1 of each fiscal year, the authority to reallocate EMA funds shall revert to the Director. In addition, any excess EMA funds available on that date, or that become available during the remainder of the fiscal year, are to be promptly released to headquarters for reallocation by the Director.

Dated: December 2, 1986

Julius W. Becton, Jr.,  
Director, Federal Emergency Management Agency.

[FR Doc. 86-27326 Filed 12-4-86; 8:45 am]

BILLING CODE 9710-01-M

**DEPARTMENT OF ENERGY****Office of the Secretary****48 CFR Part 970****Acquisition Regulation Concerning Management and Operating Contracts**

AGENCY: Office of the Secretary, DOE.

ACTION: Final rule.

**SUMMARY:** This final rule amends the Department of Energy Acquisition Regulation (DEAR) in order to describe the contractor employee travel expense limitations that apply to Department of Energy (DOE) management and operating (M&O) contracts as established for Federal executive agency contractors under the Federal Civilian Employee and Contractor Travel Expense Act of 1985 (Pub. L. 98-234), hereafter referred to as the "Act." **EFFECTIVE DATE:** This regulation will be effective December 5, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Rudolph J. Schaubauer, Business and Financial Policy Branch (MA-421.2), Procurement and Assistance Management Directorate, Washington, DC 20585, (202) 252-8173  
Paul Sherry, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, Washington, DC 20585, (202) 252-1526.

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Background.
- II. Procedural Requirements.
  - A. Review Under Executive Order 12291.
  - B. Review Under the Regulatory Flexibility Act.
  - C. Paperwork Reduction Act.
  - D. National Environmental Policy Act.
  - E. Public Hearing.
- III. Public Comments.
- I. Background

Under section 644 of the DOE Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in that position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR Chapter 9.

Title II, Travel Expenses of Government Contractors, under section 201 of the Act, specified "... costs incurred by contractor personnel for travel, including costs of lodging, other subsistence, and incidental expenses,