Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

40 CFR Part 185

Environmental protection, Food additives, Pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: April 3, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. Section 180.458 is amended as follows:

i. By adding a heading to paragraph (a) and designating the text as paragraph (a)(1).

ii. By adding paragraph (a)(2).

iii. By redesignating paragraph (b) as paragraph (a)(3).

iv. By adding with headings and reserving paragraphs (b), (c), and (d).

The added text reads as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

(a) *General.* * * *

(2) Time-limited tolerances are established for the combined residues of clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 5-(2-ethylthiopropyl)cyclohexene-3-one and 5-(2-ethylthiopropyl)-5-hydroxycyclohexene-3-one moieties and their sulphoxides and sulphones, expressed as clethodim, in or on the following raw agricultural commodities:

Commodity	Parts per million	Expiration/ Revocation Date
Alfalfa, forage	6	4/30/01
Alfalfa, hay	10	4/30/01
Dry beans	2	4/30/01
Peanut, hay	3	4/30/01
Peanut, meal	5	4/30/01
Peanuts	3	4/30/01
Tomatoes	1	4/30/01
Tomato, paste ...	3	4/30/01
Tomato, puree ...	2	4/30/01

* * * * *

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

PART 185—[AMENDED]

2. In part 185:

a. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.1075 [Removed]

b. In § 185.1075:

i. By transferring the text and table to § 180.458 and redesignating as paragraph (a)(4).

ii. The remainder of § 185.1075 is removed.

PART 186—[AMENDED]

3. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 342, 348, and 701.

§ 186.1075 [Removed]

b. In § 186.1075:

i. Paragraphs (a) and (b) are transferred to § 180.458 and redesignated as paragraphs (a)(5) and (a)(6) respectively.

ii. The remainder of § 186.1075 is removed.

[FR Doc. 98–9392 Filed 4–7––98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC67

Disaster Assistance; Public Assistance Program Appeals; Hazard Mitigation Grant Program Appeals

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This final rule changes the procedure for the review and disposition of appeals related to Public Assistance grants or related to the Hazard Mitigation Grant Program (HMGP). The rule reduces from three to two the number of appeals allowed and thus will allow faster final determination of decisions on appeal.

EFFECTIVE DATE: This rule is effective May 8, 1998.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3619, (facsimile) (202) 646–3104, about HMGP appeals; or Melissa M. Howard, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3053, facsimile (202) 646–3304, about Public Assistance appeals.

SUPPLEMENTARY INFORMATION:

Background

Under § 423 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5189a, any decision regarding eligibility or amount of assistance may be appealed. Current FEMA regulations at 44 CFR 202.206 and 206.440 provide for a three-stage appellate process, with appeals directed to the Regional Director, the Associate Director, and to the Director.

Proposed Rule

On November 24, 1997 FEMA published a proposed rule, 62 FR 62540—62542, to reduce from three to one the number of appeals allowed. As proposed, the authority for appeal decisions would have rested solely with the Regional Director, who would have had to consult with FEMA Headquarters on all potential appeal denials when the amount in question was $1,000,000 or more in Federal funds.

Public Comments

FEMA received 29 responses to the proposed rule. The most cited argument against placing the final agency decision

making authority with the Regional Director in a one-level appeal process was that the process could lead to inequitable and inconsistent decisions. A Regional Director could have a natural inclination and desire to support the initial decision made by one of his/her staff members. Some suggested that the appeals staff might include some of the same people who participated in the initial decision and that the Regional Director might have been involved in the initial determination. Therefore, they argued that it would not be fair to have a ''biased'' reviewer deciding an appeal.

The second most cited argument against the one-level appeal process was inconsistencies it could create among FEMA's 10 Regional Offices—a reimbursable cost in one region may be determined to be an ineligible cost in another region. To ensure consistency and uniformity in the application of FEMA policies and precedents, they argued that applicants should have a right to review by the Director or Associate Director at the national level.

Four commenters stated that the Regional Director's first appeal decision is often the first time that FEMA clearly identifies and discloses its position on the issue being appealed. The first appeal to the Regional Director frequently gathers new information related to the issue that the Regional Director rules upon for the first time. Until then the subgrantee and the grantee often do not have a written summary of FEMA's position due to the technical nature of the DSR process. These commenters urged that a ''one step'' appeal process—even when directed to a centralized headquarters office—would not provide an adequate record on which to base a final agency decision. They asserted that to end the process after only one appeal would merely exchange the FEMA administrative process for an even more costly and time-consuming process—the Federal court system.

The great majority of the commenters recommended that FEMA adopt a two-level appeal process. Most recommended that the first appeal be made to the Regional Director. If a second appeal was needed they recommended that it be made to the Associate Director or to the Director.

FEMA Response to Comments

We found the comments cogent and persuasive, and have established two levels of appeals. The authority for appeal decisions will rest with the Regional Director at the first level and the Associate Director/Executive Associate Director at the second level. The Associate Director's/Executive Associate Director's appeal determination will be the Agency's final administrative decision on the matter.

The intent of this change remains to reduce the amount of time and associated costs incurred by FEMA, grantees, and subgrantees to resolve appeals. All commenters agreed with that goal. Given the time allowed for appeals at each appellate level, the process can take two years or more to make a final decision under the current three-appeal process. FEMA expects that this change will provide applicants with a final resolution of contested issues more quickly than is now possible and will expedite delivery of assistance to eligible applicants. All provisions for fair and impartial consideration required by law will be maintained.

Effective Date

The rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided elsewhere in section (e). Thus, appeals pending on a first-level appeal decision of a Regional Director issued before the effective date of this rule may be appealed to an Associate Director/ Executive Associate Director under this rule. Appeals pending from a decision of an Associate Director/ Executive Associate Director issued before the effective date of this rule may be appealed to the Director under 44 CFR § § 202.206 and 206.440 as they existed before May 8, 1998. The decision of the FEMA official at the next higher appeal level will be the final administrative decision of FEMA.

Redelegation

Under the authority of 44 CFR 2.6, Redelegation of authority, the Associate Director/Executive Associate Director for Response and Recovery and the Associate Director/Executive Associate Director for Mitigation may redelegate their appeal authority under 44 CFR § § 202.206 and 206.440 in whole or in part to another FEMA official. For example, FEMA revised the delegation of appeal decisions when the Northridge Long-term Recovery Area Office was established to deal with the special reporting relationship for the large and complex Northridge earthquake disaster.

Costs Associated With Preparing and Processing Appeals

The proposed rule also provided that grantees and subgrantees would be responsible for separately tracking and accounting for all costs associated with preparing and processing appeals. FEMA would reimburse grantees' and subgrantees' administrative costs for preparing and processing appeals only when an appeal was decided in favor of the applicant.

The final rule does not contain a provision requiring grantees and subgrantees to separately track and account for all costs to prepare and process appeals. There is considerable disparity in the recommendations that commenters made on appeal costs. In the interest of instituting the new appeals procedure as soon as possible we are removing the costs provision from the final rule. We intend to continue our review of the costs to prepare and process appeals and intend to propose changes later to those cost provisions through rulemaking.

Redefinition

This rule also revises the definition of Associate Director in paragraph (a)(3) of 44 CFR 206.2 to indicate that the Associate Director or Executive Associate Director referred to in subparts A through L of part 206 is the head of the Response and Recovery Directorate, and the Associate Director or Executive Associate Director referred to in subparts M and N of part 206 is the head of the Mitigation Directorate.

List of Those Who Commented on the Proposed Rule

We appreciate the comments sent to us by the following individuals and organizations:

Richard Andrews, Director, Governor's Office of Emergency Services, Rancho Cordova, California 95741–9047
Michael Austin, Director, State of Arizona Division of Emergency Mgmt., Phoenix, Arizona 85008–3495
Robert C. Byerts, Deputy General Counsel, Florida Department of Community Affairs, Tallahassee, Florida 32399–2100
Albert Deininger, Vice President, Ambulatory Care, White Memorial Medical Center, Los Angeles, CA 90033
Doran Duckworth, State Planner/Planning Coordinator, Lansing, MI 48909–8136
Randall Duncan, NCCEM President, Falls Church, Virginia 22046–4513
Glen Fichman, Director, FEMA Coordination, University of California, Los Angeles, Los Angeles, CA 90095–1405
Mary Forrest, Chief Executive Officer, Jewish Home for the Aging, Reseda, CA 91335
Ellen Gordon, Administrator, Department of Public Defense, Emergency Management Division, Des Moines, Iowa 50319–0113
Arthur Goulet, Director, Public Works Agency County of Ventura, Ventura, CA 93009–1600
Ursula Hyman, Latham & Watkins, Los Angeles, California 90071–2007
Karen Keene, Legislative Representative, California State Association of Counties, Sacramento, CA 95814
Francis Laden, Brigadier General, Nebraska Army National Guard, Assistant Director,

Nebraska Emergency Management Agency, Lincoln, Nebraska 68508–1090
Fred Liebe, Chair, State of Oklahoma, SHMO NEMA Liaison Committee, Oklahoma Dep't of Civil Emerg'y Mgmt., Oklahoma City, OK 73152–3365
Stuart Mahler, Public Assistance Coordinator, Connecticut Office of Policy and Management, Hartford, Connecticut 06134–1441
Anthony S. Mangeri, Chair, SHMO Regulations Committee, New Jersey State Hazard Mitigation Officer
Stan McKinney, President, National Emergency Management Ass'n, Columbia, SC 29201
David McMillion, Director, Maryland Emergency Management Agency, Pikesville, Maryland 21208
Terrance Muldoon, Vice President, Saint John's Health Center, Santa Monica, CA 90404–2032
John Mulhern, Director, Delaware Department of Public Safety, Delaware Emergency Management Agency, Delaware City, Delaware 19706
Roy Price, Hawaii Department of Defense, Office of the Director of Civil Defense, Honolulu, Hawaii 96816–4495
Phillip K. Roberts, Deputy Director, Indiana State Emergency Management Agency, Indianapolis, IN 46204
Gary Seidenfeld, Hazard Mitigation Program Officer, FEMA Region II
Steven D. Sell, Administrator, Department of Military Affairs, Wisconsin Emergency Management, Madison, Wisconsin 53707–7865
Dale Shipley, Deputy Director, Ohio Emergency Management Agency, Columbus, OH 43235–2206
David L. Smith, Chief, Disaster Assistance & Preparedness, Springfield, Illinois 62701–1109
Harry Stone, Director of Public Works, County of Los Angeles, Alhambra, California 91803–1331
Jerry Uhlmann, Director, Missouri Emergency Management Agency, Jefferson City, Missouri 65102

National Environmental Policy Act

This rule is categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental impact statement or environmental assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

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

Regulatory Flexibility Act

The Director certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule will reduce the number of appeals that an entity might make and is expected to reduce administrative burden and compliance requirements associated with appeals. A regulatory flexibility analysis has not been prepared.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule complies with applicable standards of § 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

FEMA has submitted this rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L.104–121. This rule is not a ''major rule'' within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

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

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Appeals, Disaster assistance, Mitigation.

Accordingly, 44 CFR part 206 is amended as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

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

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p.376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Paragraph (a)(3) of § 206.2 is revised to read as follows:

§ 206.2 Definitions.

(a) * * *

(3) *Associate Director or Executive Associate Director:* (i) Unless otherwise specified in subparts A through L of this part, the Associate Director or Executive Associate Director of the Response and Recovery Directorate, or his/her designated representative.

(ii) Unless otherwise specified in subparts M and N of this part, the Associate Director or Executive Associate Director of the Mitigation Directorate, or his/her designated representative.

* * * * *

3. Section 206.206 is revised to read as follows:

§ 206.206 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

(a) *Format and Content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent.

(b) *Levels of Appeal.* (1) The Regional Director will consider first appeals for public assistance-related decisions under subparts A through L of this part.

(2) The Associate Director/Executive Associate Director for Response and Recovery will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time Limits.* (1) Appellants must file appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/ Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director or Associate Director/ Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/ Executive Associate Director will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998.

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

3. Section 206.440 is revised to read as follows:

§ 206.440 Appeals.

An eligible applicant, subgrantee, or grantee may appeal any determination previously made related to an application for or the provision of Federal assistance according to the procedures below.

(a) *Format and Content.* The applicant or subgrantee will make the appeal in writing through the grantee to the Regional Director. The grantee shall review and evaluate all subgrantee appeals before submission to the Regional Director. The grantee may make grantee-related appeals to the Regional Director. The appeal shall contain documented justification supporting the appellant's position, specifying the monetary figure in dispute and the provisions in Federal law, regulation, or policy with which the appellant believes the initial action was inconsistent..

(b) *Levels of Appeal.* (1) The Regional Director will consider first appeals for hazard mitigation grant program-related decisions under subparts M and N of this part.

(2) The Associate Director/Executive Associate Director for Mitigation will consider appeals of the Regional Director's decision on any first appeal under paragraph (b)(1) of this section.

(c) *Time Limits.* (1) Appellants must make appeals within 60 days after receipt of a notice of the action that is being appealed.

(2) The grantee will review and forward appeals from an applicant or subgrantee, with a written recommendation, to the Regional Director within 60 days of receipt.

(3) Within 90 days following receipt of an appeal, the Regional Director (for first appeals) or Associate Director/ Executive Associate Director (for second appeals) will notify the grantee in writing of the disposition of the appeal or of the need for additional information. A request by the Regional Director or Associate Director/Executive Associate Director for additional information will include a date by which the information must be provided. Within 90 days following the receipt of the requested additional information or following expiration of the period for providing the information, the Regional Director or Associate Director/Executive Associate Director will notify the grantee in writing of the disposition of the appeal. If the decision is to grant the appeal, the Regional Director will take appropriate implementing action.

(d) *Technical Advice.* In appeals involving highly technical issues, the Regional Director or Associate Director/ Executive Associate Director may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 days of receipt of the report, the Regional Director or Associate Director/ Executive Associate Director will notify the grantee in writing of the disposition of the appeal.

(e) *Transition.* (1) This rule is effective for all appeals pending on and appeals from decisions issued on or after May 8, 1998, except as provided in paragraph (e)(2) of this section.

(2) Appeals pending from a decision of an Associate Director/Executive Associate Director before May 8, 1998 may be appealed to the Director in accordance with 44 CFR 206.440 as it existed before May 8, 1998.

(3) The decision of the FEMA official at the next higher appeal level shall be the final administrative decision of FEMA.

Dated: April 2, 1998.

James L. Witt,

Director.

[FR Doc. 98–9207 Filed 4–7–98; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 24

[WT Docket No. 97–82; FCC 98–46]

Installment Payment Financing for Personal Communications Services (PCS) Licensees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this Order on Reconsideration of the Second Report and Order, the Commission generally affirms the framework established in the Second Report and Order but allows elections among the four payment options—disaggregation, amnesty, prepayment, and resumption of payments—to be made on a Major Trading Area (MTA) basis and makes certain other modifications to the options in order to provide C block licensees greater flexibility in making their elections. The changes will allow more of the existing licensees to adjust their business plans and remain in the wireless market to compete against other providers, while also providing for the return of spectrum to the Commission so that other entrepreneurs will have opportunities to obtain broadband PCS licenses in a reauction.

EFFECTIVE DATE: June 8, 1998.