

WEST VIRGINIA—PM—10—Continued

Designated Area	Designation		Classification	
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[FR Doc. E6-11107 Filed 7-13-06; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 206****[Docket ID FEMA-2006-0028]****RIN 1660-AA45****Public Assistance Eligibility**

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule will allow FEMA to reimburse State, Tribal and local governments within an area designated under a Presidential emergency or major disaster declaration for sheltering and evacuation costs incurred outside of the designated area. Under this rule, FEMA may also directly provide sheltering and evacuation assistance outside of the designated area.

DATES: *Effective:* This rule is effective July 14, 2006. *Comments:* Comments due on or before September 12, 2006.

ADDRESSES: You may submit comments, identified by Docket ID FEMA-2006-0028, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: FEMA-RULES@dhs.gov. Include Docket ID FEMA-2006-0028 in the subject line of the message.

Fax: 202-646-4536

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and Docket ID (if available) for this interim final rule. All comments received will be posted without change

to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at FEMA, Office of General Counsel, 500 C Street, SW., Room 835, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: James A. Walke, FEMA, 500 C Street, SW., Washington, DC 20472, or call (202) 646-2751, or e-mail james.walke@dhs.gov.

SUPPLEMENTARY INFORMATION:**Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the interim rule. FEMA also invites comments that relate to the economic, environmental, or federalism affects that might result from this interim rule. Comments that will provide the most assistance to FEMA in developing these procedures will reference a specific portion of the interim rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and Docket ID for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Submitted comments may also be inspected at Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 835, Washington, DC 20472.

Background

In response to Hurricanes Katrina and Rita in 2005, pre- and post-storm

evacuations created a significant need for evacuation and sheltering outside of the counties and States that were initially designated eligible for assistance under the emergency and major disaster declarations. State and local governmental entities outside of the designated areas provided transportation and shelter for evacuees and, as a result, incurred significant costs. However, FEMA's existing regulation required that the eligible work be performed within the designated disaster (or emergency) area. 44 CFR 206.223(a)(2). Therefore, in order for the non-designated State and local governments to recoup their eligible costs, the States were required to request and obtain approval for a separate emergency declaration. Otherwise, there was no mechanism whereby FEMA could provide assistance to those entities that provided evacuation and sheltering services outside the designated areas.

Discussion of Interim Rule

This interim rule implements a change to 44 CFR 206.223(a)(2). This rule will allow FEMA to reimburse for sheltering and evacuation costs incurred outside of the area designated under a Presidential emergency or major disaster declaration, if the costs are otherwise eligible for Public Assistance funding. Under this rule, an eligible applicant (as defined in 44 CFR 206.222) within the designated disaster area may request an entity outside of the designated area to provide evacuation and sheltering services for its citizens. In such circumstances, the entity that provides the evacuation or sheltering services may seek reimbursement under a mutual aid or similar agreement¹ from the eligible applicant within the designated area that requested the services. The eligible applicant will reimburse the providing entity and FEMA will then reimburse the eligible applicant. Alternatively, FEMA may request an entity outside of the designated area to provide evacuation and sheltering services for the affected

¹ Mutual aid agreements where one State or local government reimburses another State or local government for services provided take many forms, including the Emergency Management Assistance Compact, Public Law 104-321.

State or local government within the designated area. In this case, FEMA will directly reimburse the providing entity for eligible costs.

This interim rule will eliminate the requirement that entities, such as States and local governments that provide evacuation and sheltering services outside of the designated areas, request and receive an emergency declaration from the President before they can recoup their eligible costs for those services.

This interim rule will reduce costs and the administrative burden associated with managing Presidential emergency declarations. By eliminating the requirement for an emergency declaration, States will not have to activate the same level of emergency management plans, staff, and resources that are normally required to manage and coordinate operations with FEMA. Furthermore, FEMA will realize cost savings as it will not be required to activate and deploy a Federal Coordinating Officer and the requisite support staff and resources to manage its operations. Finally, FEMA and State governments will avoid the administrative requirements for processing an emergency declaration request or a request to add an area to an existing declaration. States will still have the option of requesting an emergency declaration when the effects of the event create conditions that warrant direct Federal support or assistance to the State providing evacuation and sheltering.

Since hurricane season started on June 1, 2006, and because this rule removes restrictions now in place without adding any new restrictions, this interim rule takes effect immediately. This will allow FEMA to provide assistance for sheltering and evacuation operations, such that the providing entities can be reimbursed while eliminating the requirement that States request an emergency declaration from the President. However, FEMA still seeks comments on this rule, especially from State and local governmental entities that have provided or received evacuation and sheltering services in previously declared disasters and emergencies.

FEMA is also aware of its responsibility to the taxpayers to ensure that this program is operated with the appropriate level of accountability. Therefore, FEMA particularly welcomes comments on whether this interim rule effectively strikes the balance of providing administrative flexibility to State and local governments while safeguarding taxpayer resources.

Administrative Procedure Act

In general, FEMA publishes a rule for public comment before issuing a final rule under the Administrative Procedure Act (APA), 5 U.S.C. 533, and 44 CFR 1.12. However, FEMA is issuing this interim rule immediately, and without prior notice and opportunity to comment pursuant section 5 U.S.C. 553(b). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” *Id.* FEMA has determined that delaying implementation of this rule to await public notice and comment is unnecessary, impracticable, and contrary to the public interest for the following reasons:

This interim rule is critically important in preparation for the 2006 hurricane season, which officially started on June 1, 2006. The evacuation and sheltering operations following Hurricanes Katrina and Rita in 2005 clearly demonstrate that FEMA needs the ability to address evacuation and sheltering operations in a manner that eliminates unnecessary costs, administrative requirements, and resource deployment. Furthermore, under this rule emergency declaration requests for evacuation and sheltering are unnecessary, thereby eliminating a significant administrative and procedural burden for State governments and FEMA.

This interim rule will permit those entities that are not located in a designated area to seek reimbursement without having to request an emergency declaration. Any delay in implementing this interim rule could affect the ability to provide these sheltering and evacuation services for the current hurricane season and have a severe impact on the health, safety, and welfare of the citizens of the affected areas. The ability to provide these services could very well be negatively affected because the administrative requirements removed by this rule take extra time to satisfy in situations where time is of the essence. Relieved of this burden, local jurisdictions and the Federal government will be free to direct their resources to more urgent tasks of evacuation and sheltering. Given that it is currently hurricane season, situations requiring such urgent action could arise in a matter of weeks or days, prior to a time when notice and comment rulemaking could be completed.

In accordance with 5 U.S.C. 553(d)(3), FEMA has determined that delaying

implementation of this rule to await public notice and comment is unnecessary, impracticable, and contrary to the public interest. Delay is impracticable and contrary to the public interest because hurricane season began on June 1, 2006, and because of the critical nature of providing evacuation and sheltering services. In the event of another catastrophic disaster, resources will be so stressed that freeing up any resources to use toward delivering services as permitted by this rule will provide significant benefits to the impacted public.

FEMA also finds good cause, under 5 U.S.C. 553(d)(3), for this interim rule to take effect immediately. FEMA finds that, for the reasons previously discussed, it would be impracticable and contrary to the public interest to delay this rule taking effect due to the current hurricane season and the critical nature of providing evacuation and sheltering services. *See also* 5 U.S.C. 553(d)(1).

Although FEMA has good cause to publish this rule without prior notice and comment, FEMA values public comments. As a result, FEMA is soliciting public comments on this interim rule and may revise the final rule in response to those comments. In particular FEMA invites comments from State and local governments who have both received and provided evacuation and sheltering services.

Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a “significant regulatory action” is subject to Office of Management and Budget (OMB) review and the requirements of Executive Order 12866. Section 3(f) of the Executive Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

DHS and OMB have determined that this rule does not constitute a significant regulatory action under Executive Order 12866. This interim rule does not substantially change the amount of eligible grant funding under Presidential emergency or major disaster declarations. Rather, it alters the mechanism by which assistance for sheltering and evacuation operations is delivered.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) mandates that an agency conduct an RFA analysis when an agency is "required by section 553 * * * to publish general notice of proposed rulemaking for any proposed rule * * *" 5 U.S.C. 603(a). Accordingly, RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). DHS has determined that good cause exists under 5 U.S.C. 553(b)(B) to exempt this rule from the notice and comment requirements of 5 U.S.C. 553(b). Therefore no RFA analysis under 5 U.S.C. 603 is required for this rule.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Unfunded Mandates Reform Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year. The Unfunded Mandates Reform Act does not require an assessment in the case of an interim rule issued without prior notice and public comment. Nevertheless, FEMA does not expect this rule to result in such expenditure.

Executive Order 13132, Federalism

This interim rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. It will not preempt any State laws. In accordance with section 6 of Executive Order 13132, FEMA determines that this rule will not have federalism implications sufficient to warrant the preparation of a federalism impact statement.

National Environmental Policy Act

This interim rule falls within the exclusion category of 44 CFR 10.8(d)(2)(ii), which addresses the preparation, revision, adoption of

regulations, directives, manuals, and other guidance documents related to actions that qualify for categorical exclusions. Because no other extraordinary circumstances have been identified, this interim rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act.

Paperwork Reduction Act of 1995

This interim rule will not revise information collection requirements currently approved under the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act, a person may not be penalized for failing to comply with an information collection that does not display a currently valid OMB control number. FEMA has determined that because the interim rule would not involve information collection, there is no need to address the Paperwork Reduction Act in the promulgation of the rule.

List of Subjects in 44 CFR Part 206

Public Assistance, Work Eligibility.

■ Accordingly, for the reasons set forth in the preamble, FEMA amends part 206 of Chapter I of title 44 of the Code of Federal Regulations as follows:

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

■ 1. Revise the authority citation for part 206 to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206; 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. Revise § 206.223(a)(2) to read as follows:

§ 206.223 General work eligibility.

(a) * * *

(2) Be located within a designated disaster area, except that sheltering and evacuation activities may be located outside the designated disaster area, and

* * * * *

Dated: July 10, 2006.

R. David Paulison,

Director, Federal Emergency Management Agency, Department of Homeland Security.
[FR Doc. E6–11128 Filed 7–13–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060314069–6069–01; I.D. 071106A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Nantucket Lightship Scallop Access Area to General Category Scallop Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces that the 577 allowed trips for general category scallop vessels into the Nantucket Lightship Scallop Access Area (NLCA) are projected to be taken by 0001 hr local time, July 13, 2006. The area will be closed to general category vessels until it reopens on June 15, 2007. This action is being taken to prevent the allocation of general category trips in the NLCA from being exceeded during the 2006 fishing year in accordance with the regulations implemented under Framework 18 to the Atlantic Sea Scallop Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of the NLCA to all general category scallop vessels is effective 0001 hr local time, July 13, 2006, through June 14, 2007.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Regulations governing fishing activity in the Sea Scallop Access Areas are found at 50 CFR 648.59 and 648.60. Regulations specifically governing general category scallop vessel operations in the NLCA are specified at § 648.59(d)(5)(ii). These regulations authorize vessels issued a valid general category scallop permit to fish in the NLCA under specific conditions, including a cap of 577 trips to be made by general category vessels during the 2006 fishing year. The regulations at § 648.59(d)(5)(ii) close the NLCA to general category scallop vessels once the Northeast Regional Administrator (RA)