

DEPARTMENT OF HOMELAND SECURITY**Federal Emergency Management Agency****44 CFR Part 153**

[DHS-2005-0006]

RIN 1660-AA34

Assistance Program Under the 9/11 Heroes Stamp Act of 2001

AGENCY: United States Fire Administration, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: The 9/11 Heroes Stamp Act of 2001 directed the United States Postal Service to issue a semipostal stamp and distribute the proceeds through the Federal Emergency Management Agency to the families of emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001. This interim rule establishes the mechanism by which FEMA will distribute these funds.

DATES: This rule is effective August 25, 2005. Submit comments on or before August 25, 2005.

ADDRESSES: You may submit comments, identified by EPA DOCKET NUMBER DHS-2005-0006 and/or Regulatory Information Number (RIN) 1600-AA34, by one of the following methods:

- *EPA Federal Partner EDOCKET Web Site:* <http://www.epa.gov/feddoCKET>. Follow the instructions for submitting comments on the Web site.

DHS has joined the Environmental Protection Agency (EPA) online public docket and comment system on its Partner Electronic Docket System (Partner EDOCKET). DHS and its agencies (excluding the United States Coast Guard and Transportation Security Administration) will use the EPA Federal Partner EDOCKET system. The USCG and TSA [legacy Department of Transportation (DOT) agencies] will continue to use the DOT Docket Management System until full migration to the electronic rulemaking Federal docket management system in 2005.

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

- *E-mail:* FEMA-Rules@dhs.gov. Include RIN 1600-AA34 in the subject line of the message.

- *Fax:* (202) 646-4536.

- *Mail:* Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to <http://www.epa.gov/feddoCKET>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to <http://www.epa.gov/feddoCKET>. You may also access the Federal eRulemaking Portal at <http://www.regulations.gov>. Submitted comments may also be inspected at Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT:

Michael Herman, Heroes Stamp, 500 C Street, SW., Room 840, Washington, DC 20472, or call 1-866-887-9107, or send e-mail to FEMA-HeroesStamp@dhs.gov.

SUPPLEMENTARY INFORMATION: The 9/11 Heroes Stamp Act of 2001, Public Law 107-67, sec. 652, 115 Stat. 514 (Nov. 12, 2001) (Heroes Stamp Act), directed the United States Postal Service (USPS) to issue a semipostal stamp and distribute the proceeds through the Federal Emergency Management Agency (FEMA) to the families of emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001.

A semipostal stamp is a type of postage that is sold for a value greater than that of a regular first class stamp. The proceeds from the price differential between the sale price of the stamp and the cost of the postage fund the distribution provided for in the Heroes Stamp Act, after appropriate deduction for reasonable costs of producing and distributing the Heroes semipostal stamps by the USPS. The Heroes Stamp Act does not grant any administrative costs to FEMA. The USPS issued the Heroes semipostal stamp in June 2002, and discontinued selling the Heroes semipostal stamp on December 31, 2004.

FEMA has established a program to distribute the funds raised from the sale of the Heroes semipostal stamp. Eligible claimants are those emergency relief personnel who have been permanently physically disabled in the line of duty and, in the case of emergency relief

personnel killed in the line of duty, their personal representatives.

The September 11th Victim Compensation Fund of 2001 compensated any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on September 11, 2001. Public Law 107-42, secs. 401 *et seq.*, 115 Stat. 237 (Sept. 22, 2001) (49 U.S.C. 40101 note). The Attorney General adopted regulations for the management of this victim compensation fund. 66 FR 66282 (Dec. 21, 2001). The Heroes Stamp Act is narrower in scope and authorizes assistance only to the emergency relief personnel killed or permanently disabled in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001, and their families. Although the Heroes Stamp Act fund is a separate fund from the September 11th Victim Compensation Fund of 2001, this interim rule incorporates some language from the rules for the September 11th Victim Compensation Fund of 2001 to provide consistency. For example, FEMA used language from the definition of "immediate aftermath" from the September 11th Victim Compensation Fund of 2001 rule when crafting the definition of "in the line of duty."

This interim rule excludes emotional injuries in the definition of "eligible claimants" because of the manner in which the legislation established the program and the limited amount of money that is available for eligible claimants. Unlike the September 11th Victim Compensation Fund of 2001, funds were donations by each purchaser of the Heroes semipostal stamps and unlike the September 11th Victim Compensation Fund of 2001, this fund does not depend on evaluation of a degree of loss.

To make the permanent disability determination, FEMA will rely on the expertise of and the determinations made by an appropriate private entity (e.g. private insurance company), Federal, State, or local agency such as: the Social Security Administration, New York Workers' Compensation Board, New York State Retirement System, New Jersey Division of Workers' Compensation, New York City Police Department and its pension system, or New York City Fire Department and its pension system.

Similarly, FEMA will rely on previously established determinations of the representative of the claimant if at all possible. Accordingly, a personal representative will be selected in the

following order: (1) An individual appointed by a court of competent jurisdiction, or the executor or administrator of the decedent's will or estate; (2) the personal representative recognized by the Special Master of the September 11th Victim Compensation Fund of 2001; or (3) a personal representative selected by FEMA. *See, K. Feinberg, 1 Final Report of the Special Master for the September 11th Victim Compensation Fund, 24–29 (2004).*

Only one application for assistance may be submitted for each emergency relief personnel killed or permanently physically disabled in the line of duty. To be eligible for assistance under the Heroes Stamp Act, each applicant is required to file an application which will be provided by FEMA upon request and consistent with the regulations. The deadline for filing an application will be announced in a separate notice in the **Federal Register**. Applications may *not* be submitted after the application deadline. In the unusual event that the applicant's documentation is not available, the applicant nonetheless must apply within the application period and must explain why he/she cannot obtain the necessary documentation. The history of claims applications to the September 11th Victim Compensation Fund of 2001 and State and local pension and Workers' Compensation agencies strongly suggests that applicants generally possess this information and that it is readily available.

The Heroes Stamp Act granted FEMA the discretion to determine eligibility criteria and the amount of any grant. FEMA will notify applicants of its determination. FEMA will attempt to distribute funds equally among all eligible claimants until the fund has been liquidated. FEMA will make an initial disbursement to all eligible claimants, after which FEMA will address and resolve any appeals. After any appeals have been administratively resolved, FEMA will make a final distribution of the funds.

After the fund has been liquidated, FEMA has no authority or funds with which to make an additional award to an otherwise eligible claimant. There are no funds available for the program other than the proceeds that were distributed to FEMA by the USPS, nor are there any other Federal funds authorized for use in making such payments. Payments can be made only from the Heroes Stamp Act fund.

\$10,565,073.61 has been collected from the sales of the Heroes semipostal stamp, plus the administrative costs of the USPS. Based on FEMA's estimate of

approximately 1000 eligible claimants, FEMA anticipates grants in the amount of approximately \$10,000 for each eligible claimant. These are only estimates and can not be relied upon for any purpose—final amounts to be paid out to claimants will only be determined after the total number of eligible claims filed have been determined.

FEMA will distribute funds to eligible claimants via Electronic Funds Transfer (EFT). FEMA will be using the DIRECT DEPOSIT SIGN-UP FORM, Standard Form 1199A (Rev. June 1987), prescribed by the Department of the Treasury, to obtain the necessary information to perform the EFT. Eligible claimants must provide the name and address of their financial institution, the routing number, the type of depositor account, the depositor account number, and the depositor account title. Finally, the financial institution must complete a certification as to the identity of the payee and the account number and title.

Because the Heroes Stamp Act does not provide for payment of legal or other fees by the Heroes Stamp Act fund, these regulations do not impose any limits on the types or amount of fees that eligible claimants may use to pay their attorneys or other costs incurred in applying for this award. Although these regulations do not set specific limits on attorneys fees separate from those existing in State law or attorney ethical standards, FEMA believes that any fee arrangement (including contingency, hourly, etc.) exceeding 5% of an eligible claimant's payment from the Heroes Stamp Act fund would not be in the best interest of the eligible claimant. However, all expenses incurred by the applicant are the sole responsibility of the applicant.

FEMA requested guidance from the Internal Revenue Service, Department of the Treasury (IRS), regarding whether certain payments made pursuant to the Heroes Stamp Act are reportable as income. On December 22, 2004, the IRS informed FEMA that FEMA is not required to issue Forms 1099 and W-2 for payments it makes to eligible claimants (or their survivors, in the case of certain death benefits) pursuant to the Heroes Stamp Act. The IRS noted, for example, that section 104(a)(5) of the Internal Revenue Code of 1986 ("the Code") (26 U.S.C. 104(a)(5)) excludes from the gross income of an individual amounts received as disability income attributable to injuries incurred as a direct result of a terrorist attack or military action and section 102(a) of the Code (26 U.S.C. 102(a)) excludes from gross income amounts received by an individual as gifts. As a result, the IRS

advised that payments made under this section are not reportable to the IRS as income. This letter is not binding on the Internal Revenue Service in determining individual tax liabilities, but only relieves FEMA of the obligation to report the distributions as taxable income to the IRS and the individual claimant.

Administrative Procedure Act

In general, FEMA publishes a rule for public comment before issuing a final rule under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that procedure where the agency, for good cause, finds the procedures for comment and response contrary to the public interest. In accordance with 5 U.S.C. 553(d)(3), FEMA finds that there is good cause for the interim rule to take effect upon the closure of the comment period because delay would be impracticable in light of the presumed need of eligible individuals for relief. Additionally, prompt disbursement of the benefits from the Heroes semipostal stamp sales proceeds is in the public interest.

Normally, FEMA affords the public 60 days to comment upon FEMA's rules. FEMA is required in its notices of proposed rulemakings, by 44 CFR 1.4(e), to allow 60 days for submission of comments. However, as FEMA is publishing an interim rule and not a notice of proposed rulemaking, FEMA is not bound by the 60 day requirement. Additionally, FEMA believes that it is in the public's interest to allow a shorter comment period in order to allow comments prior to the effective date of the rule.

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 contains information collection requirements subject to 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. This information collection request has been submitted to OMB for review and will be available for public comment and use in a notice published in the **Federal Register**.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, 58 FR 51735, October 4, 1993, a “significant regulatory action” is subject to 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.

In determining whether to proceed with the formulation and publication of this rule, FEMA considered three alternatives: manage the program through administrative directives; manage the program through a Notice of Funds Availability (NOFA); and manage the program through an interim rule. FEMA rejected both the management directive and NOFA approaches because neither provides an opportunity for public comment, which we believe is important for the assurance of public confidence in the integrity of the fund distribution. Moreover, management directives pose substantial problems in communicating the requirements of the program to the general public. NOFAs

may not reach the individuals who may be eligible under this program because NOFAs are generally designed to address organizational applications for grants and cooperative agreements. On the other hand, FEMA traditionally has used the rulemaking process when it has been directed by Congress to create new programs. FEMA has established rulemaking as the mechanism that it relies on when developing new programs so it was natural that FEMA would select rulemaking as the mechanism to establish this program.

This rule is a significant regulatory action, but not an economically significant regulatory action within the definition of section 3(f) of Executive Order 12866, and it adheres to the principles of regulation of the Executive Order. OMB has reviewed this rule under the provisions of the Executive Order.

Executive Order 13132—Federalism

This rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 44 CFR Part 153

Disaster assistance, Emergency relief personnel, Terrorism.

■ Accordingly, for the reasons set forth in the preamble, part 153 of chapter I of title 44 of the Code of Federal Regulations is added to read as follows:

PART 153—ASSISTANCE PROGRAM UNDER THE 9/11 HEROES STAMP ACT OF 2001

Sec.

153.1 Purpose.

153.2 Eligibility definitions and requirements.

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Authority: Section 652 of Pub. L. 107–67, 115 Stat. 514; 42 U.S.C. 2218(b)(5), 5 U.S.C. 301, 6 U.S.C. 112(a)(3) & (b)(1).

§ 153.1 Purpose.

This part implements the 9/11 Heroes Stamp Act of 2001 (“Heroes Stamp Act”), Public Law 107–67, 115 Stat. 514 (2001), which authorizes the Federal

Emergency Management Agency (FEMA) to establish a program to provide assistance to emergency relief personnel killed or permanently disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001, and their families.

§ 153.2 Eligibility definitions and requirements.

(a) *Eligible claimants*. The term *eligible claimants* shall mean emergency relief personnel acting in their official capacity who were killed or permanently physically disabled in the line of duty while serving at the World Trade Center, Pentagon, or Shanksville, Pennsylvania site in connection with the terrorist attacks against the United States on September 11, 2001.

(b) *Emergency relief personnel*. The term *emergency relief personnel* shall mean those individuals serving at the World Trade Center, Pentagon, or Shanksville, Pennsylvania site in connection with the terrorist attacks against the United States on September 11, 2001, who were firefighters, law enforcement officers, paramedics, emergency medical technicians, members of the clergy, or other individuals (including employees of legally organized and recognized volunteer organizations, whether compensated or not) who, in the course of professional duties, respond to fire, medical, hazardous material, or other similar emergencies.

(c) *In the line of duty*. The term *in the line of duty* shall mean emergency relief personnel were serving in their official capacity at the World Trade Center, Pentagon, or Shanksville, Pennsylvania site in connection with the terrorist attacks against the United States on September 11, 2001, during the period of time of and extending for 96 hours after the crashes resulting from the terrorist attacks.

(d) *Permanently physically disabled*. The term *permanently physically disabled* shall mean an individual with a significant and nontemporary physical impairment. In order to make these determinations, FEMA will rely on a determination by an appropriate private entity, Federal, State, or local agency.

§ 153.3 Other definitions.

Appeal means a written explanation of the applicant’s basis to contest FEMA’s eligibility determination. The appeal shall not exceed 15 pages, exclusive of supporting documentation.

Heroes Stamp Act or the Act means the 9/11 Heroes Stamp Act of 2001, section 652 of Public Law 107–67, 115 Stat. 514 (2001).

Personal representative means the individual determined to be the personal representative under § 153.4.

Special Master means the individual appointed on November 26, 2001, by the Attorney General of the United States to administer The September 11th Victim Compensation Fund of 2001. See 28 CFR part 101.

§ 153.4 Personal representative.

(a) *In general.* A personal representative will be recognized by FEMA as follows:

(1) An individual appointed by a court of competent jurisdiction as the personal representative of the decedent or as the executor or administrator of the decedent's will or estate.

(2) In the event that no personal representative or executor or administrator has been appointed by any court of competent jurisdiction, and such issue is not the subject of pending litigation or other dispute, then the personal representative selected by the Special Master will be recognized as the personal representative for the purposes of compensation under the Heroes Stamp Act.

(3) In the event that no personal representative or executor or administrator has been appointed by any court of competent jurisdiction, such issues are not the subject of pending litigation or other dispute and the Special Master did not select a personal representative, FEMA, may, in its discretion, determine whether to recognize any individual or entity as a personal representative and the identity of the personal representative.

(b) *Disputes regarding personal representative.* FEMA shall not be required to arbitrate, litigate, or otherwise resolve any dispute as to the identity of the personal representative. In the event of a dispute over the appropriate personal representative, FEMA may suspend adjudication of the claim or if sufficient information is provided, authorize payment, but place any payment in escrow until the dispute is resolved either by agreement of the disputing parties or by a court of competent jurisdiction.

§ 153.5 Application process.

(a) Only an eligible claimant may file an application for assistance under this part. An application must be submitted on the 9/11 Heroes Stamp Act of 2001 Eligibility and Application for Benefits form (FEMA Form 75-14, OMB No.

1660-0091). Only one application may be submitted for each eligible claimant. FEMA will review the applications to determine whether applicants are eligible claimants. After FEMA has evaluated the application and supporting materials, FEMA will issue and provide each applicant with a copy of FEMA's eligibility determination of that applicant.

(b) Application forms are available from FEMA upon request. They may be obtained through the mail, or by telephone request. The application form may also be downloaded from the Internet at <http://www.usfa.fema.gov>.

(c) Applications must be sent to Heroes Stamp, USFA, NETC, 16825 South Seton Avenue, Emmitsburg, MD 21727. Applications submitted by facsimile or e-mail will not be accepted.

(d) An application is deemed filed on the date it is received by FEMA.

§ 153.6 Deadline for filing an application.

The deadline for filing an application will be announced through publication of a notice in the **Federal Register**.

§ 153.7 Distribution of funds.

(a) FEMA will not distribute funds until FEMA has made eligibility determinations on all applications under § 153.5.

(b) The amount of assistance granted under the Act is within FEMA's discretion. FEMA will distribute funds equally, to the extent feasible, among eligible claimants until the fund has been liquidated. FEMA will not differentiate in making the amount of the award, between those eligible claimants who were killed or those eligible claimants who were permanently physically disabled while serving in the line of duty in connection with the terrorist attacks against the United States on September 11, 2001.

(c) FEMA will notify each individual it determines to be eligible for assistance under the Heroes Stamp Act of its intent to make a distribution, and of an estimated amount of the initial distribution. This notification will be made through the United States mail.

(d) FEMA may make multiple distributions. Once all appeals have been settled, FEMA will further distribute to eligible claimants any monies that were set-aside for applicants who are determined not to be eligible claimants.

§ 153.8 Appeal.

(a) An applicant may appeal a determination made by FEMA that the applicant is not eligible to participate in the distribution of funds. An applicant may not appeal the amount of the award.

(b) The applicant must submit a notice of his/her intent to appeal to FEMA's Appeals Specialist within 15 calendar days of the date of the issuance of FEMA's determination of eligibility. The notice of intention to appeal must be sent to: Appeals Specialist, Office of Dispute Resolution, Heroes Stamp, USFA, NETC, 16825 South Seton Avenue, Emmitsburg, MD 21727. A notice of intention to appeal submitted by facsimile or e-mail will not be accepted. The applicant must submit, along with the notice of appeal, a brief statement explaining why the applicant believes the determination regarding the application was incorrect. The notice of intention to appeal is deemed filed on the date it is received by FEMA.

(c) The applicant must file an appeal within 60 calendar days of the date of the issuance of FEMA's determination. An appeal shall mean a written explanation of the applicant's basis to contest FEMA's eligibility determination. The appeal shall not exceed 15 pages, exclusive of supporting documentation. The appeal must be sent to: Appeals Specialist, Office of Dispute Resolution, Heroes Stamp, USFA, NETC, 16825 South Seton Avenue, Emmitsburg, MD 21727. Appeals submitted by facsimile or e-mail will not be accepted. All supporting documentation must be submitted with the appeal. The appeal is deemed filed on the date it is received by FEMA.

(d) FEMA's decision on the appeal will constitute the final agency decision on the matter.

§ 153.9 Subrogation.

No person or entity having paid other benefits or compensation to or on behalf of an eligible claimant shall have any right of recovery, whether through subrogation or otherwise, against the compensation paid by the Fund.

Dated: July 15, 2005.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

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