

section and now deleted without replacement: Nevada Air Quality Regulations (NAQR) article 13.1.3(3).

\* \* \* \* \*

(25) \* \* \*

(vi) Previously approved on March 27, 1984, in paragraph (c)(25)(i)(A) of this section and now deleted without replacement: Nevada Administrative Code (NAC) section 445.706(2).

\* \* \* \* \*

(56) \* \* \*

(i) \* \* \*

(A) \* \* \*

(9) The following sections of Chapter 445B of the Nevada Administrative Code were adopted on the dates listed in paragraph (c)(56)(i)(A)(9) of this section:

(i) September 18, 2003: 445B.252.

\* \* \* \* \*

(67) New or amended regulations were submitted on August 20, 2007 by the Governor's designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(1) Nevada Administrative Code (January 2007 codification by the Legislative Counsel Bureau) section 445B.22083, "Construction, major modification or relocation of plants to generate electricity using steam produced by burning of fossil fuels;" and section 445B.250, "Notification of Director: Construction, reconstruction and initial start-up; demonstration of continuous monitoring system performance;" adopted by the State Environmental Commission on October 4, 2005.

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 206

[Docket ID FEMA-2008-0003]

RIN 1660-AA59

### Disaster Assistance; Change in Federal Share for Alternate Projects for Public Facilities

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule makes a conforming amendment to the Federal Emergency Management Agency's

(FEMA) Public Assistance regulations to reflect two changes to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) made by the Security and Accountability For Every Port Act of 2006 (the SAFE Port Act). The first change amends the percentage of the Federal contribution for alternate projects from 75 percent to 90 percent of the Federal share of the Federal estimate of eligible costs for public facilities. The second change removes language that provided for Federal funding of 90 percent of the Federal share of the approved Federal estimate of eligible costs for alternate projects in areas with unstable soil. These changes are technical and conforming amendments that revise FEMA's regulations to conform with amendments to the Stafford Act. FEMA is exercising no discretion in implementing these changes.

**DATES:** This final rule is effective April 16, 2008.

#### FOR FURTHER INFORMATION CONTACT:

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**SUPPLEMENTARY INFORMATION:** Under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act), Public Law 93-288, as amended, 42 U.S.C. 5121-5207, the Federal Emergency Management Agency (FEMA) provides funding to State or local governments or private nonprofit organizations (PNPs) to repair, restore, reconstruct or replace public facilities owned or controlled by the State or local government or PNP. If, however, the State or local government or PNP determines that the public welfare would not best be served by repairing, restoring, reconstructing, or replacing the public facility, it may elect to receive a contribution to use for alternate projects. Any alternate project must either be "to repair, restore, or expand other selected public facilities; to construct new facilities; or to fund hazard mitigation measures that the State or local government determines to be necessary to meet a need for governmental services and functions in the area affected by the major disaster." (42 U.S.C. 5172(c)(1); 44 CFR 206.203(d)(2)).

Section 609 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109-347, 120 Stat. 1884, October 13, 2006, amended section 406(c)(1) of the Stafford Act by changing the Federal

contribution for alternate projects for State and local government applicants from "75 percent of the Federal share" of the eligible costs for public facilities to "90 percent of the Federal share" of the eligible costs for public facilities. Accordingly FEMA is revising 44 CFR 206.203(d)(2)(ii) to reflect this statutorily mandated percent share increase for public facilities.

Because Congress made this change for public facilities, but made no change to the 75 percent contribution for private nonprofit applicants' alternate projects, FEMA is adding a new paragraph to separately address the Federal contribution for private nonprofit facilities, which remains at 75 percent.

Section 609 of the SAFE Port Act also struck former section 406(B) of the Stafford Act, which provided for Federal funding of 90 percent of the Federal share of the approved Federal estimate of eligible costs of alternate projects in areas with unstable soil. Because Congress removed this authority from the Stafford Act and because FEMA will already be providing funding of 90 percent of the Federal share of the approved Federal estimate to State and local governments regardless of the stability of the soil through its change to 44 CFR 206.203(d)(2)(ii), FEMA is removing the regulation that implemented section 406(B) at 44 CFR 206.203(d)(2)(iii).

#### Administrative Procedure Act

Under the Administrative Procedure Act (APA), a notice of a proposed rulemaking is not necessary to revise a regulation if the agency finds for good cause that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b)(3)(B). This rulemaking conforms with the good cause exemption under section 553(b)(B) of the APA because notice and comment is unnecessary and impractical. Public comments would serve no useful purpose, as the revision to the regulation is mandated by the change to FEMA's statutory authority, and FEMA has no discretion to alter this statutory mandate. For these reasons, FEMA also finds that it has good cause not to delay the effective date of this rule under 5 U.S.C. 553(d)(3).

#### Executive Order 12866, as Amended, Regulatory Planning and Review

FEMA has prepared and reviewed this rulemaking under the provisions of Executive Order 12866, 58 FR 51735, Oct. 4, 1993, and as amended. Under Executive Order 12866, a significant regulatory action is subject to the Office

of Management and Budget (OMB) review and the requirements of the Executive Order. 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.

This rule is not a significant regulatory action. This regulation will revise FEMA's regulations to conform to changes Congress made in the agency's authorizing statute. Before Congress revised the contribution amount for alternate projects from 75 percent to 90 percent of the Federal share of the eligible costs for public facilities, FEMA provided on average \$520,000 per year in contributions for alternate projects. Although the change to the Stafford Act and the change to FEMA's regulations by this rule will only affect the contribution amount for public facilities, this figure includes funds for public facilities as well as private nonprofit facilities, as independent data is unavailable. This regulatory change is expected, therefore, to increase that figure by 15 percent (75 to 90), which is \$78,000. Therefore the average amount of FEMA's contribution toward alternate projects would rise from \$520,000 to \$598,000 per year.

There is no effect on the economy by the removal of the language providing for Federal funding of 90 percent of the Federal share of the approved Federal estimate of eligible costs of alternate projects in areas with unstable soil. Since FEMA will already be providing funding of 90 percent of the Federal share of the approved Federal estimate regardless of the stability of the soil, those projects that have unstable soil will see no difference.

This rule is not a "significant regulatory action" under Executive Order 12866; therefore, OMB has not reviewed it under that Order. The annual effect of this rule on the economy is approximately \$78,000. FEMA knows of no other conditions

that would qualify this final rule as a "significant regulatory action" within the definition of section 3(f) of the Executive Order.

#### **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**

FEMA has not issued a notice of proposed rulemaking for this regulatory action; therefore, the provisions of the Unfunded Mandates Reform Act of 1995, as amended, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, do not apply to this regulatory action.

#### **Paperwork Reduction Act of 1995**

This rulemaking contains no new collection of information, or revision to an existing collection of information, as defined by the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520.

#### **National Environmental Policy Act of 1969 (NEPA)**

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321, 4331–4335, 4344, and 4365, an agency must prepare an environmental assessment and environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement. The rulemaking pertains to the repair, restoration, reconstruction, or replacement of a public facility. These actions are categorically excluded from the preparation of environmental impact statements and environmental assessments pursuant to 44 CFR 10.8(d)(2)(xv), pertaining to the repair, reconstruction, restoration, elevation, retrofitting, upgrading to current codes and standards, or replacement of any

facility in a manner that substantially conforms to the preexisting design, function, and location. Under 44 CFR 10.8(d)(2)(ii), the preparation, revision, and adoption of regulations related to actions that qualify for categorical exclusions are also excluded from the preparation of environmental impact statements and environmental assessments. Since this rulemaking pertains to actions that qualify for a categorical exclusion, FEMA is not required to prepare an environmental assessment or environmental impact statement.

#### **Executive Order 13132, Federalism**

Executive Order 13132, Federalism, 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that 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." Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this final rule under Executive Order 13132 and because this rule merely implements a statutory change in the percentage of public assistance funding that can be provided for alternate projects, FEMA has determined that this rule does not have federalism implications as defined by the Executive Order.

#### **Executive Order 13175, Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, 65 FR 67249, November 9, 2000, applies to agency regulations that have tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs

incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government, or the agency consults with tribal officials.

This rule implements a statutory change in the percentage of Public Assistance funding that can be provided for alternate projects. This rulemaking will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### **Executive Order 12898, Environmental Justice**

Pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

This rulemaking will not have a disproportionately high or adverse effect on minorities or low-income populations.

#### **Congressional Review of Agency Rulemaking**

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders. FEMA has sent this rule to the Congress and to GAO pursuant to the CRA.

#### **List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

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

#### **PART 206—FEDERAL DISASTER ASSISTANCE**

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

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5206; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

■ 2. Revise paragraphs (d)(2)(ii) and (d)(2)(iii) of § 206.203 to read as follows:

#### **§ 206.203 Federal grant assistance.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \*

(ii) Federal funding for alternate projects for damaged public facilities will be 90 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

(iii) Federal funding for alternate projects for damaged private nonprofit facilities will be 75 percent of the Federal share of the Federal estimate of the cost of repairing, restoring, reconstructing, or replacing the facility and of management expenses.

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Dated: April 10, 2008.

**R. David Paulison,**

*Administrator, Federal Emergency Management Agency.*

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