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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

Docket ID: FEMA-2010-0064

RIN 1660-AA23

Disaster Assistance; Crisis Counseling Regular Program; Amendment to Regulation

AGENCY: Federal Emergency Management Agency, DHS

ACTION: Final rule.

SUMMARY: Under the authority of Section 416 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, the Federal Emergency Management Agency (FEMA) provides grants for crisis counseling and treatment assistance to individuals after a Presidentially-declared major disaster. This rule finalizes, without change, current interim regulations which establish the requirements and procedures for FEMA's Crisis Counseling Assistance and Training Program.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Randall Kinder, Individual Assistance Division, Recovery Directorate, Department of Homeland Security, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472-3100, 202-212-1000; (email) fema-ia-regulations@dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Crisis Counseling Assistance and Training Program (CCP) is funded by FEMA under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 - 5207. The Stafford Act was designed to supplement the efforts and available resources of State, Tribal and local governments in alleviating the damage, loss, hardship, or suffering caused by a Presidentially-declared disaster. Specifically, section 416 of the Stafford Act (42 U.S.C. 5183) authorizes FEMA to provide supplemental funding for short-term mental health assistance and training activities for eligible victims of a Presidentially-declared major disaster.

Three entities are eligible to apply for and receive CCP funding: States, U.S. Territories, and Federally-recognized Indian Tribes. There are two separate grant programs that can be funded: the Immediate Services Program (ISP), which provides eligible costs for up to 60 days after the date of the disaster declaration; and the Regular Services Program (RSP) which provides 9 months of crisis counseling, community outreach and consultation and education services. FEMA may extend the period of the RSP beyond 9 months in limited circumstances for major disasters with catastrophic impact.

On March 21, 1989, FEMA published an interim rule (54 FR 11610) which reorganized its crisis counseling regulations for the reader's convenience, and made three substantive changes to the program. The first of those changes established a 60-day period for the State to appeal FEMA's decision regarding reconsiderations and termination of assistance for both the ISP and RSP portions of the crisis counseling program. Second, the rule clarified that an application for the ISP must be submitted within 14 days of the declaration date. Finally, the rule allowed documented eligible

expenses to be reimbursable from the incident date, rather than the declaration date, as specified in section 424 of the Stafford Act.

On March 3, 2003, FEMA published another interim rule (68 FR 9899) which amended the 1989 interim rule to allow FEMA greater flexibility to extend the program period for the RSP. Prior to the 2003 interim rule, the program period for the RSP was 9 months, and could be extended by FEMA for an additional 90 days. Under the 2003 interim rule, FEMA may extend the program period beyond the initial 9 months, and the additional 90 days, in limited circumstances for major disasters with catastrophic impact. This change was made retroactive to apply to the major disasters declared in New York and Virginia as a result of the events of September 11, 2001.

II. Discussion of the Public Comments Received

FEMA solicited public comment on both the 1989 and 2003 interim regulations, and received one comment. The commenter wrote in response to the 2003 interim rule and requested that the benefits of this program be extended to the “War on Terror” so that all Americans could receive counseling or support. The commenter specifically requested assistance for families of soldiers in Iraq.

FEMA’s authority to provide crisis counseling assistance is limited in duration and limited in scope to only those areas in which the President has declared a major disaster. FEMA is unable to grant the commenter’s request. However, there are many other counseling and assistance programs that are available to individuals who are grieving or troubled. Individuals may choose to contact the Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA) treatment locator service, which offers assistance in finding local mental

health and substance abuse treatment. They are available at <http://samhsa.gov/treatment/index.aspx> or by calling 1-800-662-HELP (4357), 24 hours a day, 7 days a week. Other services may be provided by Mental Health America at www.mentalhealthamerica.net. In many areas of the country, referrals to essential service providers can be made through the local 2-1-1 hotline; more information about that program is available at: <http://211us.org>. In addition, the individuals can call the National Suicide Prevention Lifeline at 1-800-273-TALK or via the web at <http://www.suicidepreventionlifeline.org>. Callers are routed to a suicide prevention call center near them based on the area code from which they are calling. Lastly, States often have additional crisis hotlines that are listed in the Blue Pages.

For those who are in or who have family in the military, The Army Family Assistance Hotline is 1-800-833-6622. The Marine Corps Community Service Centers may be contacted at 1-800-253-1624 (west of the Mississippi) and 1-800-336-4663 (east of the Mississippi). Information for Air Force families may be found at <http://ra.defense.gov/documents/toolkit/familyReadinessEdge.pdf>. The Coast Guard's Work-Life branch may be found at www.uscg.mil/worklife/default.asp. Information about the Navy's Fleet and Family Support Services may be found at www.cnic.navy.mil/CNIC_HQ_Site/WhatWeDo/FleetAndFamilySupportServices/index.htm. The U.S. Department of Veteran Affairs website also contains information that may also be of use for grieving families. Their website may be found at www.va.gov. Additionally, the National Military Family Association provides information at www.militaryfamily.org.

III. Statutory and Regulatory Review

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866.

Accordingly, the rule has not been reviewed by the Office of Management and Budget.

This rule finalizes two interim rules without change and merely codifies current practice since 2003. Under the first interim rule (54 FR 11610) in 1989, eligible expenses are reimbursable from the incident date, rather than the declaration date. This change increased the CCP assistance amounts because the incident date starts before the declaration date for almost all disasters. Under the second interim rule (68 FR 9899) in 2003, FEMA may extend the program period for the RSP beyond the initial 9 months and the additional 90 days, in limited circumstances for major disasters with catastrophic impact. This provision increased the CCP assistance amounts because grantees (State mental health authorities) are provided more funding for the extended program period. However, this provision has been used only on rare occasions. The second interim rule stated that this provision applied retroactively to the major disasters declared in New York and Virginia as a result of the events of September 11, 2001. From 2005 to 2009, the only disasters that exceeded the initial nine-month and the additional 90-day period

were Hurricane Gustav in Louisiana, Hurricane Rita in Louisiana, and Hurricane Katrina in Georgia, Missouri, Mississippi, and Louisiana.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), requires Federal agencies to consider the potential impact of regulations on small businesses, small governmental jurisdictions, and small organizations during the development of their rules. This rule merely codifies current practice since 2003 and is not expected to impose any direct compliance cost on small entities. FEMA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3501 et seq.), as amended, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Although this final rule will not result in a new collection of information affected by the PRA, the collection of information for the Crisis Counseling Assistance and Training Program - Immediate Services Program has been assigned OMB control number 1660-0085, and is approved through March 31, 2013.

D. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, Federalism (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on State or local

governments and would either preempt State law or impose a substantial direct cost of compliance on them. FEMA has analyzed this rule under that Order and determined that it does not have implications for federalism.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 et seq.), requires Federal agencies to assess the effects of their discretionary regulatory 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 (adjusted for inflation) or more in any one year. The Unfunded Mandates Reform Act, however, does not apply to regulations that provide for emergency assistance or relief at the request of any State, local, or Tribal government or any official of a State, local, or Tribal government (2 U.S.C. 1503). Because the crisis counseling program provides emergency assistance grants from FEMA at the request of a State, Tribe or territory, the requirements of this Act do not apply.

F. Executive Order 12630, Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, Mar. 18, 1988).

G. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, Feb. 16, 1994), FEMA has undertaken to incorporate environmental justice into its policies and programs. Executive Order 12898 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, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level.

No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population. Accordingly, the requirements of Executive Order 12898 do not apply to this final rule.

H. Executive Order 12988, Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

I. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, Nov. 9, 2000), because it does 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.

J. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not create environmental health risks or safety risks for children under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997).

K. National Environmental Policy Act

This rule is not a major agency action, nor will it affect the quality of the environment. This rule will not require the preparation of either an environmental assessment or an environmental impact statement as defined by the National Environmental Policy Act of 1969, Public Law 91-190, 83 Stat. 852 (Jan. 1, 1970)(42 U.S.C. 4321 et seq.), as amended.

L. Congressional Review of Agency Rulemaking.

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (“Congressional Review Act”), Pub. L. 104-121, 110 Stat. 873 (Mar. 29, 1996) (5 U.S.C. 804). This rule is not a “major rule” within the meaning of the Congressional Review Act.

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.

PART 206—FEDERAL DISASTER ASSISTANCE

Accordingly, 44 CFR 206.171 of the interim rule published on March 21, 1989 (54 FR 11610), with the amendment to 206.171(g)(4)(i) published on March 3, 2003 (68 FR 9899), is adopted as a final rule without change.

W. Craig Fugate,
Administrator,
Federal Emergency Management Agency

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