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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

Docket ID FEMA-2012-0004

RIN 1660-AA75

Debris Removal: Eligibility of Force Account Labor Straight-Time Costs under the Public Assistance Program for Hurricane Sandy

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim final rule.

SUMMARY: The Fiscal Year 2007 Department of Homeland Security Appropriations Act authorized a Public Assistance Pilot Program intended to reduce the costs to the Federal government of providing assistance to States and local governments; increase flexibility in the administration of assistance; and expedite the provision of assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Due to the current pressing need for efficient and timely recovery from a catastrophic disaster event, Hurricane Sandy, which has cast widespread debris over a major portion of the eastern seaboard of the United States, this rule implements one of the debris-related Public Assistance Pilot procedures: it allows for the reimbursement of the straight- or regular time salaries and benefits of the employees of Public Assistance applicants who perform disaster-related debris and wreckage removal work for any major disaster or emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy.

DATES: This interim final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], and applicable October 27, 2012. Comments must be submitted by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket ID FEMA-2012-0004, by one of the following methods:

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

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: William Roche, Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472-3100, (phone) 202-212-2340; or (email)

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SUPPLEMENTARY INFORMATION

I. Background

A. The Public Assistance Program

1. General

Each year, the United States is struck by natural disasters, which may include events such as storms, earthquakes, volcanic eruptions, and landslides, as well as events that occur from various other causes, such as fires, floods, and explosions. When a locality is, or will be, overwhelmed by the magnitude of the damage from any such event,

the community turns to the State for help. If it is evident that the situation is or will be beyond the combined capabilities of local and State resources, the Governor may request that the President declare that an emergency or major disaster exists in the State, under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121-5207.

If the President declares an emergency or major disaster and authorizes Public Assistance, FEMA may award Public Assistance grants to assist State and local governments (including Indian Tribal governments) and certain private nonprofit (PNP) organizations as defined in subpart H of 44 CFR part 206 (collectively referred to as “applicants,” “grantees,” or “subgrantees”). Public Assistance grants assist State, Tribal, and local governments with the response to and recovery from the declared event. Specifically, the Public Assistance program provides assistance for debris removal, emergency protective measures, and permanent restoration of public infrastructure. FEMA refers to debris removal and emergency protective measures as “emergency work.” FEMA also categorizes these types of work as Category A (debris removal) and Category B (emergency protective measures). Category B includes debris removal costs that are incurred as emergency protective measures, such as clearing debris to establish immediate emergency access. Permanent restoration of infrastructure, which FEMA refers to as “permanent work,” includes several categories, including Roads and Bridges (Category C), Water Control Facilities (Category D), Buildings and Equipment (Category E), Utilities (Category F), and Parks, Recreational Facilities, and Other Items (Category G). This rulemaking applies to debris removal activities only (Categories A and B).

2. Debris Removal

Sections 403(a)(3)(A), 407 and 502(a)(5) of the Stafford Act authorize FEMA to provide assistance to eligible applicants to remove debris from public and private property following a Presidential major disaster or emergency declaration, when in the public interest. See 42 U.S.C. 5170b(a)(3)(A), 5173, and 5192. Removal must be necessary to eliminate immediate threats to lives, public health and safety, eliminate immediate threats of significant damage to improved public or private property, or ensure the economic recovery of the affected community-at-large. See 44 CFR 206.224. The debris must be the direct result of the disaster and located in the disaster area, and the applicant must have the legal responsibility to remove the debris. To ensure these requirements are met, FEMA has issued extensive guidance on oversight processes and procedures to monitor debris removal activities.

In the immediate aftermath of an event, the removal of debris is a critical aspect of a community's economic recovery and return to normalcy. Debris blocks roadways prohibiting the passage of police, fire, and medical teams. Debris slows repairs and reconstruction of essential buildings and homes. It also may cause health and safety problems if left to fall on passersby, grow mold, or foster insect infestation.

Between January 1, 1999, and December 1, 2010, FEMA obligated an annual average of 3,940 Project Worksheets (PWs) and \$675,534,796 for Category A, Debris Removal for major disasters and emergency declarations. This figure does not include Category B debris removal work, including work to remove debris blocking emergency response; therefore, the total amount of debris removal funded during this time period is even higher.

B. The Public Assistance Pilot Program

The Fiscal Year (FY) 2007 Department of Homeland Security Appropriations Act (Appropriations Act), Public Law 109-295, authorized FEMA to conduct a Public Assistance Pilot Program to reduce the costs to the Federal government of providing debris-related assistance to States and local governments, increase flexibility in the administration of assistance, and expedite the provision of assistance under sections 403(a)(3)(A), 502(a)(5), and 407 of the Stafford Act. FEMA implemented four of the six Pilot procedures authorized by the Appropriations Act for the administration of Public Assistance grants. The four initiatives that FEMA offered as part of the Pilot were: grants based on estimates (for Category A and C-G large projects up to \$500,000); an increased Federal cost share for debris removal projects for applicants with a FEMA-approved debris management plan; reimbursement of straight-time wages for applicant force account labor performing disaster related debris removal work; and a debris recycling initiative. The Appropriations Act also gave FEMA the authority to waive regulations and policies to implement the Public Assistance Pilot Program. It allowed State and local governments to participate in the Public Assistance Pilot Program on a voluntary basis. Public Assistance applicants were not required to use the Pilot procedures, but could elect to use one or more of the Pilot procedures for one or more of its projects. The Appropriations Act did not authorize the participation of private non-profit applicants in the Pilot Program. FEMA was prohibited from approving any Pilot projects after December 31, 2008, and was required to submit a report to Congress regarding the effectiveness of the Pilot Program. On May 20, 2009, FEMA submitted the report, entitled “FEMA Public Assistance Pilot Program Fiscal Year 2009 Report to Congress.”

This rule implements one of the debris-related Pilot Program procedures, Force Account Labor, for disaster-related debris and wreckage removal work for any major disaster or emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy.

Under the current Public Assistance program, FEMA only pays overtime for an applicant's own labor forces and equipment, referred to as "force account labor," performing debris removal work. The regular time (also called "straight-time") salaries and benefits of permanently employed personnel are not eligible in calculating allowable costs. See 44 CFR 206.228(a)(2). However, FEMA reimburses reasonable costs associated with a debris contract, including the cost of contract workers' regular time as well as overtime. This creates an incentive for applicants to contract for debris removal work, even after relatively small events which could have been handled in part, or entirely, by an applicant's employees. For over a decade, State and local applicants have requested reimbursement for straight-time salaries for their force account labor who are pulled away from their normal day-to-day work to perform debris removal operations. In response to these requests and under the Force Account Labor procedure of the Pilot Program, FEMA reimbursed the straight-time salaries and benefits of the applicant's employees who performed disaster-related debris and wreckage removal work. FEMA's objective in reimbursing force account labor was to provide applicants the opportunity and incentive to use their own employees for debris removal activities in situations where applicants determine that is the most appropriate method to perform the work. In addition, FEMA wanted to evaluate whether debris removal operations and monitoring

performed by force account labor was less costly and more efficient than contractor operations.

Feedback received on the Public Assistance Pilot Program indicated that the Force Account Labor procedure resulted in administrative benefits. States and FEMA Regional Offices reported that grant applicants who utilized this procedure relied less on contractors, which resulted in fewer complaints and negotiation over costs and scopes of work and thus eliminated delays in accomplishing the work. FEMA also found that the Force Account Labor procedure provided applicants an incentive to monitor debris removal activities of contractors with its regular employees, rather than enter into contracts to perform the work. Indeed, ninety percent of all applicants participating in the Public Assistance Pilot Program requested reimbursement for straight- or regular time salary and benefits for their permanent employees who performed at least some of the monitoring or debris removal activities. This large participation rate, coupled with reporting from the States and FEMA Regions, shows that reimbursing straight-time for an applicant's regular employees who performed debris removal work provided an incentive for applicants to complete debris removal work themselves rather than entering into contracts to perform the work.

The Force Account Labor procedure of the Public Assistance Pilot Program also resulted in cost and time savings. Funding straight- or regular time force account labor costs provided applicants an incentive to manage debris operations more effectively and decreased the number of contractors required to both perform debris operations and monitor debris removal contractors. Not only did it reduce contractor costs, but it also allowed applicants to stop paying for contract equipment, and use their own equipment

for debris operations. Funding the straight-time of an applicant's employees also provided additional flexibility to local governments, allowing them to use a combination of contracting and force account labor for debris removal work.

In addition, because applicants started debris operations more expeditiously, and reduced or eliminated delays related to procuring and mobilizing contractors, the force account provision of the Pilot Program resulted in faster obligation of funding from FEMA. FEMA obligated funds for debris removal projects that used the Force Account Labor procedure in 60 percent less time than for those that used contractors for debris removal projects.

II. Discussion of the Rule

This rule implements the Force Account Labor procedure of the Public Assistance Pilot Program for debris removal work related to Hurricane Sandy, a catastrophic disaster event of unprecedented magnitude and severity. The geographic depth of this storm is exceptional, covering major portions of the Mid-Atlantic and Northeast, and bringing devastation to much of the Eastern seaboard. In response to this event, FEMA is promulgating this rule to accelerate the nation's recovery by maximizing the use of force account labor. A 2011 Department of Homeland Security Inspector General Report recommended that FEMA implement the force account labor procedure in some form, especially for an event of this magnitude, which would assist in reducing the occurrence of waste, fraud, and abuse.

This rule revises 44 CFR 206.228(a)(2) to allow the reimbursement of straight-or regular-time salaries and benefits of a grantee's or subgrantee's permanently employed personnel for debris removal work due to Hurricane Sandy performed under the Stafford

Act's Major Disaster Assistance Programs (sections 403 and 502) or Emergency Assistance Programs (section 407). In order to receive reimbursement, force account labor employees must work exclusively on Hurricane Sandy debris removal. They cannot combine Hurricane Sandy debris removal with their normal work-related tasks or any other tasks, including tasks related to emergencies or major disasters declared by the President before October 27, 2012. Finally, reimbursement is restricted to 30 consecutive calendar days. These provisions will provide an incentive to applicants to maximize the use of their force account labor, thus lessening the need to secure and oversee contract labor, and encouraging them to allot 100 percent of the work time of their regular staff to Hurricane Sandy debris removal, thereby contributing to a quicker and more efficient recovery.

Eligible activities include disaster-related debris and wreckage removal work for any major disaster or emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy under Category A, Debris Removal, and/or Category B, Emergency Protective Measures. Emergency work is that work which must be performed to reduce or eliminate an immediate threat to life, protect public health and safety, and to protect improved property that is threatened as a result of the disaster. See 44 CFR 206.225. Debris removal work, whether labeled as Category A or Category B, must be in the public interest. See 44 CFR 206.224. In practice, FEMA treats debris removal work the same whether it is under Category A or under Category B. Therefore, this rule makes straight-or regular-time salaries and benefits for an eligible applicant's force account labor eligible in calculating the cost of eligible Category A and/or Category B debris removal work. This rule does not allow for the reimbursement of straight- or

regular time salaries and benefits of a grantee's or subgrantee's permanently employed personnel for any other emergency protective measures under Category B.

Non-Substantive Changes.

This rule adds a reference to “grantee” in paragraph (a)(2) of section 206.228; it currently only refers to “subgrantees.” The eligibility of force account labor costs outlined in 44 CFR 206.228(a)(2) applies to grantees as well as subgrantees. The State, in most cases, acts as the grantee for the Public Assistance Program. Applicants who are successful in obtaining Public Assistance are identified as “subgrantees.” Since State, Tribal, and local government agencies are eligible applicants for Public Assistance, States may act as the grantee, as well as the subgrantee. While most work is performed by the subgrantees, it is possible that grantees could perform eligible debris removal and/or permanent work, and therefore incur straight-time force account labor costs for those activities. To be more accurate, this rule adds “grantee” to paragraph (a)(2) of section 206.228. The rule also establishes a cross reference to the exception for host state evacuation and sheltering in 44 CFR 206.202.

III. Administrative Procedure Act

FEMA has good cause to publish this interim final rule without notice and comment under 5 U.S.C. 553(b)(3)(B), as it would be impracticable, unnecessary and contrary to the public interest. The impacts of Hurricane Sandy illustrate the need for promulgating this rule as quickly as possible. Between October 28, 2012 and October 31, 2012, Hurricane Sandy produced widespread wind, storm surge, flood, and snow damage to the Mid-Atlantic and Northeast regions of the United States. Before Hurricane Sandy had even made landfall the President issued emergency declarations for nine States,

authorizing Federal resources to assist those States with their preparations for the historic storm. Hurricane force winds were experienced along portions of the coasts from Virginia to Massachusetts. On October 29, 2012, Hurricane Sandy made landfall as a post-tropical cyclone with maximum sustained winds of 85 miles per hour, which corresponds to a strong Category 1 hurricane on the Saffir Simpson Scale. Landfall occurred very close with high tide in many areas, resulting in substantial storm surge including almost 14 feet in New York City, and the Holland and Brooklyn-Battery tunnels remain closed due to flooding as of October 30, 2012. Thus far, Sandy is responsible for 30 fatalities in the United States, with search and rescue operations still ongoing.

Efficient and effective debris operations are arguably the single most important step toward community recovery following a major disaster—the ability of residents to return and live in a safe and healthy environment depends on the quality of the debris response. Since 2000, the Public Assistance Program awarded over \$8 billion in grant funding—nearly 20 percent of all Public Assistance grants obligated during the period—to reimburse eligible applicants for debris removal. In addition, over \$3 billion has been expended on Direct Federal Assistance related to debris removal. While the full scope of the damage from Sandy has yet to be determined, United States Army Corps of Engineering modeling estimates that a Category 1 hurricane making landfall in approximately the same area as Sandy could result in an excess of 27.3 million cubic yards of debris, spread across nine states and the District of Columbia.

Removing the current disincentive to applicants using their own employees for debris removal operations will encourage applicants to use their own labor forces to

perform debris work that may be done more quickly, more efficiently, and at less cost than going through a procurement process and bringing in debris removal contractors.

This rule implements a procedure that has already been thoroughly tested through a Pilot Program in which any eligible State or local government was welcome to participate. Over 4,000 applicants chose to participate, and FEMA's analysis of the Pilot program indicated that it was very beneficial to those applicants. State and local governments that participated in the Pilot program were highly supportive of this procedure. In addition, the Department of Homeland Security's Office of Inspector General has recommended that this procedure be implemented in some form.

Due to the widespread, significant impact of disasters like Hurricane Sandy, and given that the procedure implemented by this interim final rule was extensively tested during the Public Assistance Pilot Program, FEMA has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay putting the provisions of this interim final rule in place until a public notice and comment process has been completed. We find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. We will accept public comments on this interim final rule for 60 days.

We are also dispensing with the Administrative Procedure Act requirement that a new rule not take effect until 30 days after it is issued. Instead, this rule is effective October 27, 2012, to allow the maximum benefit for Hurricane Sandy debris removal operations. Immediate effectiveness is authorized because this is a substantive rule granting an exception to the prohibition on reimbursing Public Assistance applicants for their straight-time force account labor costs associated with debris removal in response a

major disaster or emergency. In addition, for the reasons set forth above, there is good cause to make the procedure implemented by this rule effective immediately.

IV. Regulatory Analysis

A. National Environmental Policy Act (NEPA)

CEQ regulations provide for Federal agencies to establish categories of actions that do not individually or cumulatively have a significant impact on the human environment which do not require an environmental assessment or environmental impact statement. 40 CFR 1508.4. FEMA's "List of exclusion categories" at 44 CFR 10.8(d)(2)(ii) categorically excludes the preparation, revision, and adoption of regulations related to actions that qualify for categorical exclusions. Further, essential assistance under section 403 and debris removal under section 407 of the Stafford Act are categorically excluded at 44 CFR 10.8(d)(2)(xix)(B) and (C). These categorical exclusions cover all debris removal actions under the Stafford Act.

Finally, FEMA has evaluated the potential for extraordinary circumstances as required in 44 CFR 10.8(d)(3) and determined that the procedure authorized under this rule does not change its environmental effect. The straight-time force account labor provision does not change the nature or extent of debris removal activities reimbursed by FEMA. The potential for reimbursement of straight-time force account labor provides applicants with more flexibility to perform debris removal work with their own employees in addition to, or in place of, contractors, but does not affect the eligibility of debris removal actions under this program. An environmental assessment was not prepared for this rulemaking action because a categorical exclusion applies and no extraordinary circumstances exist.

B. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501 et seq., 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 control number. The collection of information associated with the Public Assistance program is approved under OMB Control No. 1660-0017, which expires on April 30, 2013. This rule does not contain any new collections of information.

C. Executive Order 12866, Regulatory Planning and Review & 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 been designated a “significant regulatory action” under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

The rule provides (unquantified) benefits that are vitally important to further FEMA’s mission. This rule increases efficiency, flexibility, and reduces the costs of performing debris removal work after Hurricane Sandy. The rule affects States, Indian Tribal governments, local governments, as well as certain private non-profit organizations that have been affected by Hurricane Sandy, by maximizing the use of force account labor for debris removal, thus accelerating the recovery process.

Review of FEMA’s existing debris regulations revealed that they could be expanded to provide for more efficient and timely debris removal after a disaster. As discussed earlier in this preamble, the reimbursement of force account labor for debris removal under the Pilot Program greatly improved efficient and timely debris removal. In reimbursing force account labor, FEMA provided applicants with an incentive to perform the work in-house, as well as improve oversight of debris removal operations. Therefore, FEMA is expanding the debris regulations to incorporate this procedural improvement into the debris removal program in response to Hurricane Sandy.

D. Executive Order 13132, Federalism

Executive Order 13132, “Federalism” (64 FR 43255, Aug. 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 rule under Executive Order 13132 and has concluded that this rule does not have federalism implications as defined by Executive Order 13132. FEMA has determined that this rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion. This rulemaking amends a voluntary grant program that may be

used by State, local and Tribal governments and eligible private nonprofit organizations to receive Federal grants to assist in the recovery from disasters. States are not required to seek grant funding, and this rulemaking does not limit their policymaking discretion.

E. 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.

The purpose of this rule is to implement a debris-related Public Assistance Pilot Program procedure. This rule reimburses straight- or regular time wages for the permanent employees of Public Assistance applicants while they perform disaster-related debris and wreckage removal activities related to Hurricane Sandy for a period of 30 consecutive calendar days. Reimbursing straight- or regular time for an applicant’s permanent employees who perform debris removal work will provide an incentive for applicants to complete debris removal work themselves rather than entering into contracts to perform the work. Removing debris expeditiously provides value to the American people by creating safer communities and reducing loss of life and property, enables communities to recover more rapidly from disasters, and lessens the financial impact of

disasters on individuals, the United States Department of the Treasury, State, local and Tribal communities.

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 rule.

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

FEMA has reviewed this rule under Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, Nov. 9, 2000). Under Executive Order 13175, FEMA may not issue a regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute. In reviewing this rule, FEMA finds that because Indian Tribal governments are potentially eligible applicants under the Public Assistance Program, this rule does have “tribal implications” as defined in the Executive Order. However, eligibility to receive reimbursement for force account labor for debris removal operations 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. This rule does not impose substantial direct compliance costs on Indian Tribal governments nor does it preempt tribal law, impair treaty rights nor limit the self-governing powers of Indian Tribal governments.

G. Regulatory Flexibility Act Statement

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on “small entities” (small businesses, small organizations and local governments). The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a notice of proposed rulemaking and therefore is exempt from the requirements of the RFA.

H. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1501 et seq., requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. UMRA exempts from its definition of “Federal intergovernmental mandate” regulations that establish conditions of Federal assistance or provide for emergency assistance or relief at the request of any State, local, or Tribal government. Therefore, this rule is not an unfunded Federal mandate under that Act.

I. 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.

J. Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights

FEMA has reviewed this rule under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” (53 FR 8859, Mar. 18, 1988) as supplemented by Executive Order 13406, “Protecting the Property Rights of the American People” (71 FR 36973, June 28, 2006). Sections 403(a)(3)(A) and 407 of the Stafford Act, 42 U.S.C. 5170b and 5173, respectively, provide FEMA authority to fund debris removal from private property provided that the State or local government arranges an unconditional authorization for removal of the debris, and agrees to indemnify the Federal government against any claim arising from the removal. The regulations implementing Sections 403 and 407 of the Stafford Act at 44 CFR 206.224 establish the requirement that debris removal be in the “public interest” in order to be eligible for reimbursement. Generally, debris removal from private property following a disaster is the responsibility of the property owner. However, large-scale disasters may deposit enormous quantities of debris on private property over a large area resulting in widespread immediate threats to the public-at-large. In these cases, the State or local government may need to enter private property to remove debris to: eliminate immediate threats to life, public health, and safety; eliminate immediate threats of significant damage to improved property; or ensure economic recovery of the affected community to the benefit of the community-at-large. In these situations, debris removal from private property may be considered to be in the public interest and thus may be eligible for reimbursement under the Public Assistance Program. See 44 CFR 206.224. FEMA will work with States affected by a disaster to designate those areas where the debris is so

widespread that removal of the debris from private property is in the “public interest” pursuant to 44 CFR 206.224, and thus is eligible for FEMA Public Assistance reimbursement on a case-by-case basis. This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630.

K. Congressional Review of Agency Rulemaking

FEMA is sending the rule to Congress and to the Government Accountability Office pursuant to the Congressional Review of Agency Rulemaking Act (Congressional Review Act)(CRA), Pub. L. 104-121, 110 Stat. 873 (March 29, 1996) (5 U.S.C. 801 et seq). This rule is not a “major rule” within the meaning of the CRA. Furthermore, Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. As stated previously, FEMA has made such a good cause finding, including the reasons therefore.

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 discussed in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

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

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 et seq.; Department of Homeland Security Delegation 9001.1.

2. Revise §206.228, paragraph (a)(2) to read as follows:

§ 206.228 Allowable costs.

* * * * *

(a) * * *

(2) Force Account Labor Costs. The straight- or regular-time salaries and benefits of a grantee's or subgrantee's permanently employed personnel are:

(i) Eligible in calculating the cost of eligible permanent repair, restoration, and replacement of facilities under section 406 of the Stafford Act;

- (ii) Eligible, at the Administrator's discretion, in calculating the cost of eligible debris removal work under sections 403(a)(3)(A), 502(a)(5), and 407 of the Stafford Act for a period not to exceed 30 consecutive calendar days, provided the grantee's or subgrantee's permanently employed personnel are dedicated solely to eligible debris removal work for any major disaster or emergency declared by the President on or after October 27, 2012, in response to Hurricane Sandy; and
- (iii) Not eligible in calculating the cost of other eligible emergency protective measures under sections 403 and 502 of the Stafford Act, except for those costs associated with host state evacuation and sheltering, as established in §206.202.

* * * * *

Janet Napolitano,
Secretary.

[FR Doc. 2012-27382 Filed 11/08/2012 at 8:45 am; Publication Date: 11/09/2012]