



Billing Code: 9111-11-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID: FEMA-2018-0015]

RIN 1660-AA94

Removal of Dispute Resolution Pilot Program for Public Assistance Appeals

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is removing its regulations regarding its Dispute Resolution Pilot Program (DRPP) for the Public Assistance Program. The statutory authority for the DRPP sunset on December 31, 2015.

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

ADDRESSES: The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that Web Site's instructions.

FOR FURTHER INFORMATION CONTACT: Liza Davis, Associate Chief Counsel, Regulatory Affairs, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472, 202-646-4046, or (email) liza.davis@fema.dhs.gov.

SUPPLEMENTARY INFORMATION: Section 1105 of the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113-2, 127 Stat. 43 (Jan. 29, 2013), 42

U.S.C. 5189a note, directed FEMA to establish a Dispute Resolution Pilot Program (DRPP). The DRPP allowed applicants to choose arbitration by an independent review panel in lieu of a second appeal to resolve disputes relating to Public Assistance projects. FEMA published a final rule on August 16, 2013 (78 FR 49950) to establish the DRPP. The regulation is located at 44 CFR 206.210.

Under section 1105 of SRIA, the authority to accept requests for arbitration pursuant to the DRPP sunset on December 31, 2015. FEMA did not receive any requests for arbitration under the DRPP. As the authority for the DRPP has sunset, FEMA is now removing the regulations from the CFR.

Regulatory Analysis

Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the *Federal Register* and provide interested persons the opportunity to submit comments. See 5 U.S.C. 553(b) and (c). The APA provides an exception to this requirement for rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). The final rule that established 44 CFR 206.210 was a rule of agency organization, procedure, or practice, and was promulgated without notice and comment rulemaking. This removal of that rule is also a rule of agency organization, procedure, or practice. Removing these regulations is consistent with FEMA's current statutory authority and does not affect the substantive rights or interests of the public.

The APA also provides an exception from notice and comment procedures when an agency finds for good cause that those procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). FEMA finds good cause to

issue this rule without prior notice or comment, as such procedures are unnecessary. The removal of these regulations would have no substantive effect on the public because the statutory authority for the DRPP has sunset.

The APA generally requires that substantive rules incorporate a 30-day delayed effective date. 5 U.S.C. 553(d). This rule, however, is merely procedural and does not impose substantive requirements; thus, FEMA finds that a delayed effective date is unnecessary.

Executive Orders 12866, 13563, and 13771

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) 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. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”) directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is

exempt from the requirements of Executive Order 13771. *See* OMB’s Memorandum “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’” (April 5, 2017).

SRIA included a sunset provision of December 31, 2015 for the DRPP. Accordingly, the program is discontinued and there are no costs or cost savings associated with removing the regulations regarding the DRPP. This rule’s benefits include a more streamlined CFR that reflects current program options.

Regulatory Flexibility Act

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, Public Law 104–121, 110 Stat. 847, 858–9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. The RFA applies only 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). An RFA analysis is not required for this rulemaking because FEMA is not required to publish a notice of proposed rulemaking.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501-1504, 1531-1536, 1571, pertains to any rulemaking which is likely to result in the promulgation of any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated

costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking 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 as a result of a Federal mandate, 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.

Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA 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.

Due to this final rule, FEMA will remove FEMA Form 055-0-0-1, Request for Arbitration and Recommendation resulting from Dispute Resolution Pilot Program from information collection, OMB Control Number 1660-0017, Public Assistance Program. Since the program is discontinued, the form is no longer required, and FEMA is removing the associated hour burden estimates which equal 60 hours. Thus, the total hour burden for this collection is being reduced from 425,736 to 425,676.

Collection of Information

Title: Public Assistance Program.

OMB Number: 1660-0017.

FEMA Forms: FEMA Form 009-0-49 Request for Public Assistance; FEMA Form 009-0-91 Project Worksheet (PW); FEMA Form 009-0-91A Project Worksheet (PW)--Damage Description and Scope of Work Continuation Sheet; FEMA Form 009-0-91B Project Worksheet (PW)--Cost Estimate Continuation Sheet; FEMA Form 009-0-91C Project Worksheet (PW)--Maps and Sketches Sheet; FEMA Form 009-0-91D Project Worksheet (PW)--Photo Sheet; FEMA Form 009-0-120 Special Considerations Questions; FEMA Form 009-0-121 PNP Facility Questionnaire; FEMA Form 009-0-123 Force Account Labor Summary Record; FEMA Form 009-0-124 Materials Summary Record; FEMA Form 009-0-125 Rented Equipment Summary Record; FEMA Form 009-0-126 Contract Work Summary Record; FEMA Form 009-0-127 Force Account Equipment Summary Record; FEMA Form 009-0-128 Applicant's Benefits Calculation Worksheet; and FEMA Form 009-0-111, Quarterly Progress Reports.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance grants based on the information supplied by the respondents.

Affected Public: State, Local or Tribal government.

Estimated Number of Respondents: 1012.

Estimated Number of Responses: 398,068.

Estimated Total Annual Burden Hours: 425,676.

Estimated Total Annual Respondent Cost: The estimated annual cost to respondents for the hour burden is \$26,306,779.

Estimated Respondents' Operation and Maintenance Costs: None.

Estimated Respondents' Capital and Start-Up Costs: None.

Estimated Total Annual Cost to the Federal Government: \$805,311.96.

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.

FEMA is removing the DRPP regulations, whose legislative authority has sunset. The removal of these regulations will have no substantive effect on the public since the statutory authority for the program has sunset and will not affect the substantive rights or interests of Indian Tribal governments.

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 determined that this rulemaking does not have a substantial direct effect 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, and therefore does not have federalism implications as defined by the Executive Order.

National Environmental Policy Act of 1969 (NEPA)

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, an agency must prepare an environmental assessment or 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.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and

publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a-f). This rule meets Categorical Exclusion A3(a), which covers rules of a strictly administrative or procedural nature.

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 final rule to the Congress and to GAO pursuant to the CRA. The rule is not a “major rule” within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

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, the Federal Emergency Management Agency amends 44 CFR part 206 as set forth below:

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.

§ 206.210 [Removed and Reserved]

2. Remove § 206.210.

Dated: August 23, 2018.

Brock Long,

Administrator,

Federal Emergency Management Agency.

[FR Doc. 2018-18796 Filed: 8/29/2018 8:45 am; Publication Date: 8/30/2018]