

governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to today's action, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action implements requirements specifically set forth by the Congress in sections 4005(c)(1)(B) and (c)(1)(C) of Subtitle D of RCRA, as amended, without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to today's action.

#### *Certification Under the Regulatory Flexibility Act*

The EPA has determined that this authorization will not have a significant adverse economic impact on a substantial number of small entities. By approving State municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by part 258 to the extent the State permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR part 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant adverse economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR part 258 requirements. Today's action, therefore, does not require a regulatory flexibility analysis.

#### *Submission to Congress and the General Accounting Office*

Under section 801(a)(1)(A) of the Administrative Procedures Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing today's document and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by section 804(2) of the APA as amended.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the EPA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector of \$100 million or more in any one year.

Today's action contains no Federal mandates (under the regulatory provisions of Title of the UMRA) for State, local, or tribal governments or the private sector. Today's action would merely acknowledge the adequacy of a portion of an existing State program. The EPA has determined that this action would not contain any Federal mandate that may result in expenditures of \$100 million or more for state, local, and tribal governments, in the aggregate or the private sector in any one year. Therefore, today's action is not subject to the requirements of section 202 of the UMRA.

#### *Certification Under the Regulatory Flexibility Act*

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

**Authority:** This action is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: March 10, 1999.

**Myron O. Knudson,**

*Acting Regional Administrator, Region 6.*  
[FR Doc. 99-8337 Filed 4-20-99; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 206

RIN 3067-AC72

### Disaster Assistance; Cost-share Adjustment

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule accomplishes three objectives. First, it establishes the financial criteria under which we, FEMA, recommend to the President a cost-share adjustment for permanent restorative work and for emergency work under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act). Second, the rule states that we recommend capping the Federal share of assistance at ninety percent (90%). Third, we raise the \$64 statewide per capita threshold that we have used since 1985 for recommending cost-share adjustments to current dollars, and will adjust that threshold annually in future years. The new threshold is phased in over a gradual period. The rule in no way affects the current process under which the President sometimes grants one hundred percent (100%) Federal funding for emergency work, including direct Federal assistance, for limited periods following disaster declarations when the emergency needs warrant it.

**EFFECTIVE DATE:** This rule is effective May 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202-646-4066, (facsimile) 202-646-4060, or (email) patricia.stahlschmidt@fema.gov.

#### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On March 5, 1998, we published a proposed rule on cost-share adjustment under the Stafford Act, 42 U.S.C. 5121 *et seq.* in the **Federal Register** at 63 FR 10816. We invited comments for 60 days ending on May 4, 1998. We received nine sets of comments: two from State and local government organizations; six from States; and one from a local government. Three commenters generally supported placing the criteria in regulation and annually adjusting the threshold for inflation, and one commenter agreed with the ninety percent (90%) cap on the Federal share of assistance. Most commenters objected to various aspects

of the rule. Following is a summary of the comments and our responses.

### **Evaluation of Cost-share Adjustments**

One of the most frequent comments was that there was no evaluation or analysis of the original threshold for recommending cost-share adjustments, and therefore there is no basis for raising this threshold to current dollars. Further comments along this line argued that the proposed threshold fails to consider State capability and does not provide an incentive for mitigation. We acknowledge that there was no analysis of the original \$64 per capita threshold for recommending cost-share adjustments. However, that threshold is widely recognized and we have used it consistently since 1985 when we recommended the first cost-share adjustment. We do not intend, and never intended, to measure State capability or to provide an incentive for mitigation through this rule. Rather, the \$64 threshold is simply a yardstick to determine when the economic impact of a disaster is of such severity that it warrants recommendation for a cost-share adjustment. We are quite willing to work with our State partners to identify capability or mitigation measures that might justify consideration of a cost-share adjustment. However, we view that as a longer-term effort separate from this rule. With respect to measuring economic impact, no commenters offered alternatives to the use of a per capita impact although two did suggest that we lower the threshold to \$50 per capita. We believe instead that the 1985 threshold should be brought up to current dollars and adjusted annually using the Consumer Price Index for All Urban Consumers, since that is the legislative basis for annually adjusting the small project grants under the Public Assistance Program and grants under the Individual and Family Grant Program.

### **Presidential Discretion for Cost-share Adjustments**

Several commenters noted that the threshold for granting cost-share adjustments unwisely limits Presidential discretion, and fails to account for the unique circumstances of a disaster. We believe that the rule adequately allows for Presidential discretion. First, the wording of the rule has been revised to state that we would *recommend* to the President when a cost-share adjustment is warranted in recognition of the fact that the President retains the authority for actually granting cost-share adjustments. Secondly, the rule clearly recognizes

that, irrespective of the economic threshold established here, the President may continue the practice of granting up to one hundred percent (100%) Federal funding for emergency work when he believes such action is warranted in the early days of the disaster.

### **Multiple Disasters**

Several commenters noted that the rule contains no provision for multiple disasters within a State. We agree, and have revised the rule to state that we will consider the effect of major disaster declarations in a State within the preceding twelve months. The final rule does not specifically indicate how we will consider multiple disasters because that would depend on the circumstances. We need to consider the timing of the disasters, the size, and the location when we review the impact of multiple disasters. For example, two very large disasters that strike the same area of a State might have a much greater economic impact than widely disbursed small disasters in the State even though the cumulative per capita impact might be similar.

### **Statewide Population Factors**

A number of other commenters noted that the per capita threshold should consider the relative densities within a State, or should be based on the county and not on statewide population. We will continue to base the threshold on the statewide population to reflect the supplemental nature of Federal disaster assistance and the State's preeminent role in this partnership. The declaration process itself analyzes the localized impacts of the disaster when we recommend which counties should be granted Federal disaster assistance. If a State wishes to adjust the nonfederal cost-share burden in certain areas of the State it can do so through the State/applicant split of the nonfederal cost-share.

### **Actual Stafford Act Obligations To Measure per Capita Impact**

Several commenters noted that the nonfederal share and State administrative costs should be included in the calculation of statewide per capita impact, and that the threshold should be based on estimates. We currently consider only actual obligations when determining the per capita impact of a disaster and will continue that practice. Actual obligations provide a better and more consistent measure of the impact of a disaster than do estimates, which can vary widely from disaster to disaster and can change dramatically over the

course of the disaster. In order to be consistent in our method of measuring the per capita impact we will also continue our practice of measuring Stafford Act obligations only. State administrative costs have been and will continue to be considered when we measure per capita costs though we do not include our administrative costs in the calculation.

### **Limitation on Use of Sliding Scales**

Three commenters noted that § 320 of the Stafford Act precludes any geographic area from receiving assistance under the Act solely by virtue of an arithmetic formula or sliding scale based on income or population. We are well aware of this provision of the Act but do not violate it because the rule does not prohibit any geographic area from receiving assistance under the Act. The rule merely determines when a more favorable cost-share adjustment may be recommended.

### **Gross Domestic Product as a Measure of Impact**

One commenter noted that in the 1993 floods that affected nine Midwestern States the President used 0.1 percent of the gross domestic product (GDP) as the measure to determine that a cost-share adjustment would be recommended for all nine States. That GDP measurement was not mentioned in the proposed rule because it has come to be a one-time-only measurement. In more recent multi-state flood disasters in the Upper Midwest and Ohio River basins we considered only the per capita threshold as the basis for recommending a cost-share adjustment.

### **Timeframe for Implementation**

One commenter noted that the proposed timeframe for implementation is no longer relevant. We recognize that it is no longer relevant. Due to the length of time for publication, comment and review of comments, the timeframe for implementation of the new threshold will now begin in calendar year 1999 on May 21, 1999 and not in fiscal year 1998. The phase-in period to bring the threshold up to current dollars has also been extended to address concerns about the increase in the threshold.

### **National Environmental Policy Act**

44 CFR part 10 categorically excludes this rule from its requirements. We have not prepared an environmental assessment.

### Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has not reviewed this rule under E.O. 12866.

### Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

### Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

### Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

### Congressional Review of Agency Rulemaking

We have sent this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104-121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It establishes the financial criteria under which we would recommend a cost-share adjustment for permanent restorative work and for emergency work, and recommends capping the Federal cost-share for permanent restorative work at ninety percent (90%). The rule does not result in nor is it likely to result in 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. 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.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not meet the \$100,000,000 threshold of that Act, and

any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

### List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 206 is amended as follows:

### PART 206 SUBPART B—THE DECLARATION PROCESS

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

**Authority:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding § 206.47 to read as follows.

#### § 206.47 Cost-share adjustments.

(a) We pay seventy-five percent (75%) of the eligible cost of permanent restorative work under section 406 of the Stafford Act and for emergency work under section 403 and section 407 of the Stafford Act, unless the Federal share is increased under this section.

(b) We recommend an increase in the Federal cost share from seventy-five percent (75%) to not more than ninety percent (90%) of the eligible cost of permanent work under section 406 and of emergency work under section 403 and section 407 whenever a disaster is so extraordinary that actual Federal obligations under the Stafford Act, excluding FEMA administrative cost, meet or exceed a qualifying threshold of:

(1) Beginning in 1999 and effective for disasters declared on or after May 21, 1999, \$75 per capita of State population;

(2) Effective for disasters declared after January 1, 2000, and through December 31, 2000, \$85 per capita of State population;

(3) Effective for disasters declared after January 1, 2001, \$100 per capita of State population; and,

(4) Effective for disasters declared after January 1, 2002 and for later years, \$100 per capita of State population, adjusted annually for inflation using the Consumer Price Index for All Urban Consumers published annually by the Department of Labor.

(c) When we determine whether to recommend a cost-share adjustment we consider the impact of major disaster

declarations in the State during the preceding twelve-month period.

(d) If warranted by the needs of the disaster, we recommend up to one hundred percent (100%) Federal funding for emergency work under section 403 and section 407, including direct Federal assistance, for a limited period in the initial days of the disaster irrespective of the per capita impact.

Dated: April 14, 1999.

**James L. Witt,**

*Director.*

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### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 73 and 74

[MM Docket No. 98-93; FCC 99-55]

#### 1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this Report and Order, the Commission modifies its rules to extend first come/first served processing to applications for minor changes to AM, reserved frequency noncommercial educational FM ("NCE FM") and FM translator facilities. The Commission also expands the definition of "minor change" in these services to conform more closely to the commercial FM definition, which includes all changes except changes in community of license and certain changes in frequency and/or class. Finally, we amend the contingent application rule to permit the filing of up to four related and simultaneously-filed minor change FM station construction permit applications. These modifications were proposed as part of a broad-based initiative, undertaken in conjunction with the Commission's 1998 biennial regulatory review, to streamline Mass Media Bureau radio technical rules.

**EFFECTIVE DATE:** May 21, 1999.

**FOR FURTHER INFORMATION CONTACT:** Peter H. Doyle, Audio Services Division, Mass Media Bureau (202) 418-2700 or William J. Scher, Audio Services Division, Mass Media Bureau, (202) 418-2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's First Report and Order in MM Docket 98-93, adopted March 23, 1999, and released March 30, 1999. The complete text of this Report and Order is available for