

§ 123.27 Requirements for enforcement authority.

(a) Any State agency administering a program shall have the authority to establish the following violations and have available the following remedies and penalties for such violations of State program requirements:

* * * * *

(3) To assess or sue to recover in court civil penalties and to seek criminal penalties as follows:

* * * * *

(ii) Criminal fines shall be recoverable against any person who willfully or negligently violates any applicable standards or limitations; any NPDES permit condition; or any NPDES filing requirement. These fines shall be assessable in at least the amount of \$10,000 a day for each violation.

* * * * *

(b) * * *

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of proof or degree of knowledge or intent EPA must provide when it brings an action under the Act, except that a State may establish criminal violations based on any form or type of negligence.

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PART 233—404 STATE PROGRAM REGULATIONS

■ 3. The authority citation for part 233 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

■ 4. Section 233.41 is amended by revising paragraphs (a)(3) introductory text, (a)(3)(ii), and (b)(2) to read as follows:

§ 233.41 Requirements for enforcement authority.

(a) * * *

(3) To establish the following violations and to assess or sue to recover civil penalties and to seek criminal penalties, as follows:

* * * * *

(ii) To seek criminal fines against any person who willfully or with criminal negligence discharges dredged or fill material without required permits or violates any permit condition issued under section 404 in the amount of at least \$10,000 per day of such violation.

* * * * *

(b) * * *

(2) The burden of proof and degree of knowledge or intent required under State law for establishing violations under paragraph (a)(3) of this section, shall be no greater than the burden of

proof or degree of knowledge or intent EPA must provide when it brings an action under the Act, except that a State may establish criminal violations based on any form or type of negligence.

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[FR Doc. 2020-26777 Filed 12-11-20; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA-HQ-OLEM-2020-0107; FRL-10015-46-OLEM; 10018-00-OLEM]

Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is extending the comment period on the advance notice of proposed rulemaking for legacy coal combustion residuals (CCR) surface impoundments. The original advance notice of proposed rulemaking was published on October 14, 2020, and the public comment period was originally scheduled to end on December 14, 2020. With this document, EPA is extending the public comment period an additional 60 days, through February 12, 2021.

DATES: The comment period for the proposed rule published October 14, 2020 at 85 FR 65015 is extended. The EPA must receive comments on or before February 12, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-HQ-OLEM-2020-0107. Follow the detailed instructions provided under **ADDRESSES** in the **Federal Register** document of October 14, 2020 (85 FR 65015). Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> or email, as there may be a delay in processing mail and

faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. If you have questions, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Michelle Long, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304P, Washington, DC 20460; telephone number: (703) 347-8953; email address: long.michelle@epa.gov. For more information on this rulemaking please visit <https://www.epa.gov/coalash>.

SUPPLEMENTARY INFORMATION: On April 17, 2015, EPA promulgated national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments at 40 CFR part 257, subpart D. On August 21, 2018, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion in the case of *Utility Solid Waste Activities Group (USWAG), et al. v. EPA, 901 F.3d 414 (D.C. Cir. 2018)*, which vacated and remanded the provision that exempted inactive impoundments at inactive facilities from the CCR regulations. As a first step to implement this part of the court decision, EPA is seeking comments in an advance notice of proposed rulemaking (ANPRM) and data on inactive surface impoundments at inactive facilities to assist in the development of future regulations for these CCR units.

The original notice for the legacy CCR surface impoundment ANPRM was published on October 14, 2020, and the comment period was scheduled to end on December 14, 2020. See 85 FR 65015. Since publication of the notice, on November 6, 2020, USWAG requested an additional 60 days to review the ANPRM, develop and submit comments. This request is available in the docket at EPA-HQ-OLEM-2020-0107. USWAG said given the complexity of the information being requested in the ANPRM, and the fact that USWAG members are currently focused on the development of submissions for the Part A (85 FR 53516, August 28, 2020) and Part B (85 FR 72506, October 14, 2020), an extension will result in the Agency receiving a more comprehensive data submission from USWAG. After receiving the request from USWAG, EPA has decided to extend the comment period to address the concerns that were

raised. The comment period is extended until February 12, 2021.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2020–27360 Filed 12–11–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2020–0038]

RIN 1660–AA99

Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) is proposing a rule to substantively revise the “Estimated cost of the assistance” disaster declaration factor that FEMA uses to review a Governor’s request for a major disaster under the Public Assistance Program. FEMA proposes revisions to this factor to more accurately assess the disaster response capabilities of the 50 States, the District of Columbia, and the U.S. territories (States), and to respond to the direction of Congress in the Disaster Recovery Reform Act of 2018, which requires FEMA to review its disaster declaration factors and update them via rulemaking, as appropriate.

DATES: All comments must be submitted by February 12, 2021.

ADDRESSES: You may submit comments on this proposed rule, identified by Docket ID FEMA–2020–0038, by the following method:

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

Comments on the proposed information collections included in this proposed rule should be submitted both to FEMA, as indicated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be identified by the appropriate OMB Control Number(s), addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via

electronic mail to dhsdeskofficer@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Director of Public Assistance, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, 202–646–3936, fema-recovery-pa-policy@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of <http://www.regulations.gov>.

Viewing comments and documents: For access to the docket to read supporting documents and comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>. Background documents and submitted comments may also be inspected at FEMA, Office of Chief Counsel, 500 C Street SW, Washington, DC 20472–3100.

II. Executive Summary

Pursuant to 44 CFR 206.48(a), FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the Public Assistance (PA) program.¹ FEMA proposes to amend the factor in 44 CFR 206.48(a)(1) for “estimated cost of the assistance,” to

¹ Under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170), the President may declare that a major disaster exists after finding, upon request by a State governor, that such disaster is beyond the capabilities of the State and affected local governments, and that Federal assistance is needed. FEMA receives the governor’s request and makes a recommendation to the President whether such a declaration is warranted. See 44 CFR 206.37.

raise the per capita indicator and the minimum threshold.²

Since 1986, FEMA has evaluated the estimated cost of Federal and non-Federal public assistance against the statewide population and used a per capita dollar amount (set at \$1 in 1986) as an indicator that a disaster may warrant Federal assistance. The per capita indicator remained at \$1 until 1999, when the Agency began adjusting the indicator for inflation in 1999 and annually thereafter.³ Also in 1999, FEMA established a \$1 million minimum threshold, meaning it would not recommend that the President authorize the PA program unless there was at least \$1 million in damages resulting from the disaster and within the proposed area for Public Assistance. At the time, FEMA believed \$1 million was a level of damage from which even the least populous States could recover with their own resources. FEMA has never increased the \$1 million threshold. Additionally, FEMA also considers impacts at the local level and recent disasters in the 12 months prior to a declaration request to evaluate the impact to the State or locality.

In the Disaster Recovery Reform Act of 2018 (DRRA), Congress directed FEMA to give greater consideration to the recent multiple disasters and localized impacts factors when evaluating a request for a major disaster.⁴ Congress also directed FEMA to generally review the factors it considers when considering a request for a major disaster, specifically the estimated cost of assistance factor, and to update the factors through rulemaking, as appropriate.⁵

The lack of increases to the per capita indicator from 1986 to 1999 has undercut the value of this factor as an indicator of State capacity given the 51 percent reduction in purchasing power during that time.⁶ In addition, a State

² See 44 CFR 206.48(a). Other factors include: Insurance coverage in force, hazard mitigation, and other Federal assistance programs. *Id.*

³ At the time of drafting this proposed rule, the indicator was \$1.50 in fiscal year 2019. See FEMA, Notice of Adjustment of Statewide per Capita Impact Indicator, 83 FR 53279 (Oct. 22, 2018).

⁴ Sec. 1232 of Public Law 115–254, 132 Stat. 3460 (Oct. 5, 2018). However, as discussed below, FEMA does not propose to substantively amend 44 CFR 206.48(a)(2) because that factor is already sufficiently flexible to address the requirements of section 1232 of the DRRA.

⁵ Sec. 1239 of Public Law 115–254, 132 Stat. 3466 (Oct. 5, 2018).

⁶ April 1986 CPI–U was 108.6 and January 1999 CPI–U was 164.3. $(164.3 - 108.6) / 108.6 = 51.29\%$. See Bureau of Labor Statistics, U.S. Department of Labor, “Consumer Price Index, Archived Consumer Price Index Supplemental Files”: Historical CPI–U, November 2019, (available for download at <https://>