CAA. These rules also are not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks'' (62 FR 19885, April 23, 1997) because they determine that air quality in the affected areas are meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures to otherwise satisfy the provisions of the CAA.

These rules do not impose an information collection burden under the provisions of the Paper Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Under Executive Order 12898, EPA finds that these rules involve determinations of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in these areas, including minority and low-income communities.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** These actions are not ''major rules'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by January 19, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or actions.

These actions, pertaining to the determinations of attainment for the 1997 fine particulate matter standard for the Martinsburg-Hagerstown, Parkersburg-Marietta, and Wheeling $PM_{2.5}$ nonattainment areas, may not be challenged later in proceedings to enforce requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

Dated: November 10, 2009.

William C. Early,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart V—Maryland

■ 2. Section 52.1081 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.1081 Control strategy: Particulate matter.

* * * * *

(b) Determination of Attainment. EPA has determined, as of November 20, 2009, the Martinsburg-Hagerstown, WV–MD $PM_{2.5}$ nonattainment area has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspend the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 $PM_{2.5}$ NAAQS.

Subpart KK—Ohio

■ 3. Section 52.1880 is amended by adding paragraph (k) to read as follows:

§ 52.1880 Control strategy: Particulate matter.

* * * * *

(k) Determinations of Attainment. EPA has determined, as of November 20, 2009, the Parkerburg-Marietta, WV-OH and the Wheeling, WV-OH $PM_{2.5}$ nonattainment areas have attained the 1997 $PM_{2.5}$ NAAQS. These determinations, in accordance with 40 CFR 52.1004(c), suspend the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as these areas continue to meet the 1997 $PM_{2.5}$ NAAQS.

Subpart XX—West Virginia

■ 4. Section 52.2526 is amended by designating the existing paragraph as paragraph (a) and by adding paragraph (b) to read as follows:

§ 52.2526 Control strategy: Particulate matter.

* * * * *

(b) Determinations of Attainment. EPA has determined, as of November 20, 2009, the Martinsburg-Hagerstown, WV-MD, the Parkersburg-Marietta, WV-OH and the Wheeling, WV-OH $PM_{2.5}$ nonattainment areas have attained the 1997 $PM_{2.5}$ NAAQS. These determinations, in accordance with 40 CFR 52.1004(c), suspend the requirements for these areas to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as these areas continue to meet the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. E9–27824 Filed 11–19–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2006–0028]

RIN 1660–AA45

Public Assistance Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) provides financial assistance to State, local, and Tribal governments, as well as certain private non-profit organizations, for response and recovery activities required as a result of a presidentially-declared major disaster or emergency. Assistance may include reimbursement for sheltering and evacuation costs

incurred to assist individuals displaced by a declared major disaster or emergency. This rule finalizes the July 2006 interim rule which amended FEMA's Public Assistance eligibility regulations to allow grantees to seek reimbursement for sheltering and evacuation costs incurred outside of the area designated under a Presidential emergency or major disaster declaration, if such costs are otherwise eligible for FEMA Public Assistance. This rule further clarifies those regulations to specify which entities may be eligible for reimbursement for costs incurred from providing evacuation and sheltering services outside the area of the declared emergency or major disaster, and the procedures FEMA will use to reimburse those applicants. The rule also establishes the terms ''impact-State'' and ''host-State'' to differentiate between the State for which the President has issued a declaration and that requests evacuation and/or sheltering assistance, and the State (or Tribe) that provides the sheltering and/or evacuation assistance, respectively. Finally, the rule makes a procedural change to the way in which a host-State receives reimbursement for the regular salary or hourly wages and benefits paid to its permanent employees.

DATES: *Effective Date:* December 21, 2009.

ADDRESSES: The electronic docket for this rulemaking is available on the Federal eRulemaking Portal at *www.regulations.gov,* in Docket ID ''FEMA–2006–0028.'' A hard copy of the docket may also be viewed at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472–3100.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Acting Director, Public Assistance Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472–3100, (phone) 202–646–3936, or (e-mail) *tod.wells@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FEMA, through its Public Assistance program, provides financial assistance to State, Tribal, and local governments, as well as certain private non-profit organizations to quickly respond to and assist communities to recover from major disasters or emergencies declared by the President. In providing assistance through this program, FEMA provides a grant to a ''grantee,'' which is typically a State, but may also be an Indian Tribal government. 44 CFR 206.201(e) and 206.202(f). The grantee administers the program and provides funding directly to ''subgrantees,'' which may be local governments, eligible private non-profit organizations, and Indian Tribal governments. An Indian Tribal government may choose to be either a grantee or a subgrantee. The grantee submits eligible costs incurred by it and/or its subgrantees to FEMA for reimbursement.

Traditionally, the grantee is the State that requests and receives a major disaster or emergency declaration from the President, and the costs eligible for reimbursement from FEMA are costs incurred in the area designated in the major disaster or emergency declaration. Costs incurred outside the declared area were not reimbursable. When a State, Indian Tribal, or local government, or an eligible private non-profit incurred costs as a result of a disaster that occurred elsewhere, the State [1] was required to seek its own emergency declaration to have those costs reimbursed.

In response to Hurricanes Katrina and Rita in 2005, 45 States requested and received emergency declarations to recover sheltering costs for tens of thousands of evacuees from the Gulf Coast States. Declaring an emergency in each of these States [2] was an imperfect method of responding because each State incurred administrative costs to request an emergency declaration, and requesting States were subject to the cost share requirements of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [3] (Stafford Act). FEMA concluded that ''host'' States, Tribes, and local governments could better assist ''impact'' States needing assistance evacuating and sheltering their residents as a result of declared major disasters or emergencies if the host-State could obtain reimbursement directly from either the impact State, Tribe or local government or directly from FEMA without first obtaining an individual emergency declaration.

On July 14, 2006, FEMA published an interim rule amending its Public Assistance eligibility regulations to allow grantees to seek reimbursement for sheltering and evacuation costs incurred outside of the area designated under a Presidential emergency or major disaster declaration, if such costs are otherwise eligible for FEMA Public Assistance funding. 71 FR 40025. FEMA, in promulgating the 2006 interim rule, recognized the benefit in reimbursing grantees outside of a designated area when they are requested to provide, and consequently incur, costs for sheltering and evacuation support to evacuees from another State, Tribe, or local government.

In making this change, the 2006 interim rule expanded eligible costs to include sheltering and evacuation costs that occur outside of a declared area, and allowed States to recover these costs through direct Federal reimbursement when such assistance was requested by the State with a declaration.

The expansion of eligible costs to include sheltering and evacuation activities that occur outside a declared area affected costs both within and outside a declared State. The evacuation and sheltering costs provided between local governments within a State may be covered by mutual aid agreements, whereas assistance provided outside a state may be covered either by a mutual aid agreement between States or direct Federal reimbursement to a State from FEMA pursuant to a disaster declaration.

Many local governments have pre-existing mutual aid agreements and share materials and services with one another in times of need. Under mutual aid agreements, a requesting jurisdiction within a designated area may request another jurisdiction outside of the designated area to provide evacuation and sheltering services for the requesting jurisdiction's residents. Additionally, many States participate in the Emergency Management Assistance Compact (EMAC), or have other similar agreements, through which the States agree to provide assistance to one another when requested. Under a mutual aid arrangement, the jurisdiction that requested the assistance reimburses the providing jurisdiction for its costs, and then in turn, seeks reimbursement from FEMA (through the State, if the requesting entity is an eligible subgrantee).

The 2006 interim rule also allowed other States that provide evacuation and sheltering services to recover their costs from FEMA after a declared State requests direct Federal assistance pursuant to 44 CFR 206.208. FEMA provides direct Federal assistance to the

[1] As defined in the Stafford Act, only States may receive major disaster or emergency declarations. Although Indian Tribal governments may be grantees under a State's declaration, the President does not have the authority to issue a declaration for a Tribe. See 42 U.S.C. 5122, 5170, and 5191.

[2] The standard Federal/State cost share rate is 75/25, although it may be raised to 90/10 or 100% Federal. See 42 U.S.C. 5170(b), 5193(a), and 44 CFR 206.47. The declarations issued to States that provided sheltering and/or evacuation services as a result of Hurricanes Katrina and Rita in 2005 and Hurricane Gustav in 2008 were set by the President at a 100 percent Federal rate. There is no guarantee, however, that future disasters will receive a 100 percent rate as the rate is set on a case by case basis at the President's discretion.

[3] Disaster Relief Act of 1974, Public Law 93–288, 88 Stat. 143 (May 22, 1974), as amended 42 U.S.C. 5121 *et seq.*

declared State when a State or Indian Tribal government outside the declared area, at FEMA's request, provides sheltering and evacuation services to that declared State. States, Tribes, and local governments that provide sheltering and/or evacuation assistance do not seek direct Federal assistance; the State with the declaration makes the request, and then FEMA identifies States and Tribes that are willing and able to help. This change, therefore, only affects costs outside a State that was granted an emergency or major disaster declaration; it will not affect local governments or private non-profit entities within the declared State. Only when an impact-State is overwhelmed and lacks the capability to perform or contract for emergency work would it turn to FEMA for direct Federal assistance. Since a State must exhaust its resources before receiving direct Federal assistance from FEMA, there would be no resources available within the State to provide evacuation and sheltering services.

FEMA evaluated the effectiveness of the 2006 interim rule following mass evacuations from Louisiana, including the City of New Orleans, in advance of Hurricane Gustav in August 2008. Although FEMA has found that the changes made by the 2006 Public Assistance Eligibility interim rule significantly improved the reimbursement process during the 2008 hurricane season, FEMA identified several areas to further improve the procedures for reimbursing evacuation and sheltering assistance. For example, although some States preferred to be directly reimbursed by FEMA, they requested clarification regarding the reimbursement process and which entities would be eligible for direct reimbursement. In the Public Assistance program, typically the State for which the major disaster or emergency is declared (the ''impact-State'') is the grantee, but, in this case, a State without a major disaster or emergency declaration providing the evacuation services may receive a grant. This new situation raised questions as to whether the State without a declaration has the responsibilities of a grantee with respect to its grant, or whether it is a subgrantee of the impact-State. States did not understand who was responsible for the non-Federal cost share under the 2006 interim rule. The 2006 interim rule did not answer whether an undeclared State that provided sheltering and evacuation services stood as a grantee or as a subgrantee to the declared State, and there was no clear application process in place. Grantees are typically responsible for paying the non-Federal cost share and for oversight under 44 CFR part 13.

This confusion led to delays and duplicative application requirements for those seeking to recover regular salary or hourly wages and benefits paid to an applicant's permanent employees, referred to as ''straight-time force account labor costs.'' For example, because straight-time force account labor costs were eligible only when incurred through mutual aid agreements between States, States sought reimbursement for these costs through mutual aid agreements and would apply for direct funding from FEMA for the remaining costs. Thus, a clear understanding of the procedures for addressing out-of-state evacuation and sheltering is essential to FEMA's effective management of the Public Assistance program. This final rule clarifies the process for FEMA reimbursement of those entities outside a declared area that provide sheltering and/or evacuation assistance. Further, it will provide a more efficient grant process that is likely to result in more States being willing to provide their resources to protect residents of another State impacted by a major disaster or emergency.

FEMA recognized, in addition, the need to reimburse straight-time force account labor costs through the direct Federal assistance process. Public Assistance grants are generally not available to reimburse force account straight-time for emergency work. 44 CFR 206.228(a)(2). Since an applicant's costs for permanently employed personnel are pre-disaster existing resource costs the employer would incur in addressing its responsibilities regardless of whether the event occurred, these costs are not eligible. Overtime wages are reimbursable, however, for permanent employees working extra hours in performing eligible emergency work as a result of the declared emergency or major disaster. Labor costs, including overtime wages, moreover, to backfill employees assigned to perform eligible emergency work in support of the declared emergency or major disaster are also reimbursable.

FEMA currently reimburses straight-time force account labor costs when States use the mutual aid process (such as EMAC). These costs are eligible under mutual aid because the jurisdiction providing the assistance under the agreement is considered a contractor hired as a result of the declared event to address the needs of another jurisdiction. Contrary to the typical disaster assistance subgrantee, States that host another State's residents are not expending pre-budgeted costs to address their own governmental responsibilities. FEMA has been repeatedly advised that States assisting other States' residents are unable and unwilling to assume this added expense should a future disaster occur. This final rule, therefore, makes a change in procedure that allows for the reimbursement of straight-time force account labor to host-States directly from FEMA, rather than solely through the mutual aid process. This change is strictly procedural, and does not otherwise affect the eligibility of those costs, or the amount reimbursed. This change is expected to result in more States being willing to provide host-State sheltering assistance.

FEMA, in this rule, addresses public comments received on the interim rule, finalizes the regulations, and implements these procedural improvements. This rule establishes definitions for ''impact-State'' and ''host-State'' to clearly differentiate between the State that is being directly impacted by the event resulting in a Presidential emergency or disaster declaration and has requested direct Federal assistance to address its evacuation and sheltering needs out of state, and the State that is, at FEMA's request, providing the evacuation and sheltering to residents from the designated areas. The rule more clearly articulates the entities that may be eligible to act as a host-State, and establishes application procedures for host-States seeking reimbursement for evacuation and sheltering activities directly from FEMA. Finally, the rule revises the procedure by which host-States receive reimbursement of straight-time force account labor costs. As with the 2006 interim rule, this rule allows for both mechanisms for reimbursement—a host-State may receive reimbursement either through a mutual aid agreement or by direct reimbursement from FEMA.

II. Discussion

A. Amendments to FEMA's Public Assistance Regulations Under This Final Rule

1. Designation of Affected Areas—Clarification of Terminology

FEMA's regulations occasionally refer to ''disaster-affected'' areas or ''designated disaster'' areas in sections that apply to both emergencies and major disasters. To remove the potential that one could misconstrue the use of the term ''disaster'' as FEMA's intent to exclude application during declared emergencies, FEMA has revised the

language to be more precise. The term ''disaster-affected'' has been replaced with the term ''affected'' in 44 CFR 206.40(b). The word ''disaster'' has been removed before ''affected'' in 44 CFR 206.2(a)(6). The term ''designated disaster area'' has been replaced with ''designated area'' in 44 CFR 206.223(a)(2), and the words ''emergency or,'' have been added before the phrase ''major disaster event'' in 44 CFR 206.223(a)(1). Similarly, to clarify that 44 CFR 206.208(a) applies to emergency assistance under an emergency declaration as well as a major disaster declaration, this rule adds Stafford Act citations to that section.

2. Direct Reimbursement for Host-State Evacuation and/or Sheltering—Clarification of Procedure and General Eligibility

As a result of the 2006 interim rule, a State or Tribe may be reimbursed for costs incurred from evacuation and sheltering activities performed outside the designated area. This rule amends FEMA regulations to align with the preamble of the 2006 interim rule and clarify that a State with a Stafford Act declaration may request direct Federal assistance from FEMA for evacuation and/or sheltering activities that occur outside the State. In doing so, the rule points applicants to the eligibility requirements for those who may provide evacuation and/or sheltering assistance when requested, what costs are eligible for reimbursement, and establishes the procedures the providing entity must follow to seek reimbursement. The State with a Presidential declaration may also request assistance from another State on its own, through a mutual aid agreement (such as EMAC), but this rule does not specifically address that option since mutual aid costs are already reimbursed by FEMA.

Direct Federal assistance under 44 CFR 206.208 applies when a State lacks the capability to perform or contract for emergency work. When this occurs, the State asks FEMA for assistance. In this rule the requesting State is referred to as the ''impact-State.'' When such a request is made, FEMA will ask another State or an Indian Tribal government if it is capable and willing to provide sheltering and/or evacuation assistance to the impact-State. If such State or Indian Tribal Government is capable and willing, FEMA will then provide direct reimbursement through a grant to the State or Indian Tribal government that provides evacuation and/or sheltering activities. The providing State or Indian Tribal government is referred to in this rule as the ''host-State'' or ''host-Tribe,'' respectively, or collectively as the ''host-State.'' Through the direct Federal assistance process, the host-State is a grantee. Although it is obtaining assistance as a result of the impact-State's declaration, it is not a subgrantee of the impact-State. This means that although the impact-State will continue to incur the Federal cost-share for the assistance, the impact-State is not responsible for the oversight of the host-State's grant under the requirements of 44 CFR part 13 as it would for subgrantees. The cost-share requirements for impact-States are discussed more fully elsewhere in this preamble.

FEMA's regulations set out the criteria that routinely apply when direct Federal assistance is requested by and provided to a State that has received a Stafford Act declaration. 44 CFR 206.208. This rule clarifies that the criteria also apply to a host-State and an impact-State. For example, the impact-State is responsible for the non-Federal cost share under 44 CFR 206.208(b)(iii) and as required in 44 CFR 206.208(c), the requested work must be eligible under the Public Assistance eligibility criteria contained in Subpart H, *Public Assistance Eligibility.* Since the criteria set out in 44 CFR 206.208 apply to an impact-State's request for direct Federal assistance, as well as to how FEMA can provide such assistance, a provision has been added to 44 CFR 206.208 that specifically addresses host-State reimbursement.

The 2006 interim rule was also silent with respect to when and to which entity FEMA would award a grant for direct Federal reimbursement. FEMA must take into consideration the host-State's evacuation and sheltering capabilities before it can award a grant to the host-State to protect against the possibility of individuals being sent to States that are unable to appropriately shelter them. Neither FEMA nor the impact-State should send people to a host-State, as a matter of policy, if that host-State is unable to meet the needs of the evacuees. A grant to a State that cannot host evacuees would not serve the purpose of aiding the impact-State. The determination of a host-State's capability will be made on a case-by-case basis and the criteria will vary depending upon the specific needs of the impact-State, but will generally focus on the availability of short or mid-term housing, and equipment for evacuation activities. This rule adds a provision to 44 CFR 206.208 to address this need, providing that a grant to a host-State is available when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of the impact-State.

To establish a record of the agreement and reduce confusion and miscommunication, this rule adds a requirement to 44 CFR 206.208 that the host-State must agree in writing to provide evacuation and/or sheltering assistance to individuals from the impact-State. This agreement is referred to as the commitment letter, and is provided to FEMA before the execution of the FEMA/Host-State Agreement.

The 2006 interim rule also lacked sufficient clarity with respect to the host-State's obligation to enter into a written agreement with FEMA. This rule clarifies that a host-State must enter into a FEMA/Host-State Agreement (similar to a FEMA/State Agreement) before grant funds will be awarded. This FEMA/Host-State Agreement, which covers the conditions of the grant award, is consistent with that required of a declared State grantee pursuant to 44 CFR 206.44. The FEMA/Host-State Agreement also includes a provision on the cost share.

Grantees are required by the Stafford Act and FEMA's implementing regulations to pay a percentage share of the costs of the Federal assistance, known as the non-Federal cost share. *See* 42 U.S.C. 5170(b), 5193(a), and 44 CFR 206.47. Such costs would include those for evacuation and sheltering activities. This cost share requirement applies whether the cost is incurred through mutual aid or through direct Federal assistance. The Federal/non-Federal cost share for a grant to a host-State to evacuate and/or shelter individuals from the impact-State is the same as the cost share established for all other Category B, Emergency Protective Measures, for the declared major disaster or emergency. As with all other assistance under the declaration, the non-Federal cost share for host-State sheltering is the responsibility of the impact-State under its declaration. This means that the host-State will be reimbursed for 100 percent of its eligible costs and the impact-State will continue to be responsible for the non-Federal cost share as agreed to in its FEMA/State Agreement. FEMA finds that the host-State should be reimbursed for 100 percent of its eligible costs because it is using its State resources to aid individuals from another State. Such costs are not part of a host-State's annual budget. For impact-States, these costs would have been borne by the impact-State had they sheltered their residents in-State, or requested assistance from the host-State themselves through mutual aid. This clarification, therefore, adds no new

costs for the impact-State. An impact-State must agree, when requesting direct Federal assistance for evacuation and sheltering, to provide the non-Federal cost share for all eligible costs incurred by any host-State to ensure that no improper Federalism implications occur and that impact-States knowingly and willingly agree to incur these costs.

States have expressed some confusion as to whether host-State grantees are required to submit the same information, and undertake the same obligations as other grantees. The requirements for host-State direct reimbursement under 44 CFR 206.202(f)(1) and 206.208 should be read together. A host-State's responsibilities, including the requirement to assume the responsibilities of a Public Assistance grantee with respect to its grant award, are set out in 44 CFR 206.202(f). The host-State assumes these responsibilities because the host-State is receiving a direct grant from FEMA and is therefore acting as a grantee. For clarity, in 44 CFR 206.208, this rule specifically adds a reference to 44 CFR 206.202(f)(1), Host-State Evacuation and/or Sheltering.

This rule clearly states that, as a grantee, the host-State must submit a Standard Form 424, *Application for Federal Assistance,* to apply for reimbursement from FEMA. SF–424 is not a new requirement, as FEMA requires this form from all grantees under 44 CFR 206.202(e). The host-State is responsible for this and other grants management provisions in the regulation only with respect to its evacuation/sheltering grant. FEMA also requires all grantees to develop a State administrative plan. See 44 CFR 206.207. The State administrative plan includes the designation of State agencies responsible for program administration, identifies Public Assistance staffing functions, and includes procedures for conducting briefings, notifying potential applicants, processing appeal requests, and other procedures for administering the Public Assistance program. Grantees are required to update their administrative plans under 44 CFR 206.207. This rule clearly states that this requirement also applies to host-States under 44 CFR 206.202(f).

3. Straight-Time Force Account Labor

As discussed above, FEMA currently reimburses applicants for the overtime costs of their permanently employed personnel who perform emergency work as a result of a declared event when direct Federal assistance is provided. FEMA does not, however, reimburse the straight-time wages for these employees. When a host-State provides evacuation and/or sheltering assistance under a mutual aid agreement, however, FEMA does reimburse host-State force account labor for both straight-time and overtime. FEMA treats the costs incurred by the host-State (referred to as a ''providing entity'') under a mutual aid agreement as contract labor, with regular time and overtime wages and certain benefits eligible, provided the labor rates are reasonable.

FEMA's reimbursement of regular- or ''straight-time'' salaries is generally governed by 44 CFR part 13 (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*); 2 CFR Part 225 (*Cost Principles for State, Local, and Indian Tribal Governments*); OMB Circular A–102, *Grants and Cooperative Agreements with State and Local Governments;* and OMB Circular A–87, *Principles for Determining Costs Applicable to Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments.* FEMA has determined that it is appropriate to reimburse the regular- or straight-time salaries of a host-State's permanent employees' eligible evacuation and sheltering activities on behalf of an impact-State because a host-State is providing assistance to an impact-State's residents. The host-State is using its own resources for another State's residents, and, therefore, should be wholly compensated for the assistance that it has not budgeted. This assistance is not being provided for the benefit of the host-State's taxpayers.

As a result of Hurricanes Katrina and Rita, FEMA recognized the importance of host-State evacuation and sheltering activities in response to a large-scale event. Host-States should be encouraged to provide such assistance for future large scale events, as necessary, and delay in reimbursement through the impact-State discourages such assistance. Allowing reimbursement of straight-time force account labor under both the mutual aid and direct grant mechanisms ensures consistency and fairness in reimbursement of these eligible costs. Allowing this reimbursement also avoids any potential administrative burden of the States being required to consider differences in eligible costs when considering which reimbursement mechanism is most suitable. This rule, therefore, establishes a process for FEMA to provide direct Federal reimbursement to a host-State for straight-time salaries and benefits of a host-State's permanently employed personnel who perform evacuation and/or sheltering activities. A host-State's straight and overtime costs may be directly reimbursed through the host-State's grant from FEMA.

4. Definitions of Host-State and Impact-State

FEMA makes frequent reference to entities within the designated area of a Presidential emergency or major disaster declaration and entities that provide evacuation and/or sheltering assistance outside the State receiving the emergency or major disaster declaration. FEMA has recognized the need to assign shorter, uniform terms to identify these entities. A uniform definition ensures consistency and clarity in implementation of this regulation. This final rule therefore adds definitions for ''host-State'' and ''impact-State'' to 44 CFR 206.201, which is the definitions section for the Public Assistance project administration regulations.

A ''host-State'' is a State or Indian Tribal government that by agreement with FEMA is providing sheltering and/or evacuation support to evacuees from an impact-State. An ''impact-State'' is the State for which the President has declared an emergency or major disaster and that, due to a need to protect its affected residents, requests assistance from FEMA pursuant to 44 CFR 206.208 to evacuate and/or shelter such individuals outside the State.

5. Definitions of Grantee and Indian Tribal Government

Since host-States are grantees, as described in this rulemaking, FEMA is updating the definition of ''grantee.'' Typically, the declared State is the grantee eligible to receive assistance under the emergency or major disaster declaration, and is responsible for the administration and use of assistance provided under the Public Assistance program for that declaration. The revised definition of grantee states that for purposes of the Public Assistance regulations, the declared State is the grantee, except as noted in 44 CFR 206.202(f). The exception under paragraph (f) allows a host-State to apply for a grant for the specific purpose of providing sheltering and evacuation activities to the impact-State that requested direct Federal assistance from FEMA. Under this exception, a host-State reimbursed by FEMA pursuant to 44 CFR 206.208 for sheltering and/or evacuation activities has all of the responsibilities of the declared State in administering its Public Assistance grant. FEMA makes a similar clarifying amendment to the definition of ''grantee'' in 44 CFR 206.431 to note that the grantee is generally the declared State. FEMA has added this clarification

because before this rulemaking the ''grantee'' has always been presumed to be the declared State for both the Public Assistance and Hazard Mitigation Assistance programs. Without this change, FEMA was concerned that in the absence of express language to the contrary, the definition would leave the impression that a State is not required to be the declared one to receive assistance under the Hazard Mitigation Grant Program.

Before this final rule, the definition of grantee referred to a State, and 44 CFR 206.202(f) created an exception that allowed Indian Tribal governments affected by an emergency or major disaster to apply directly to FEMA for a grant when State law prohibits a State to act as grantee for an Indian Tribal government. This rule merges the exception for Indian Tribal governments that appeared in paragraph (f) into the definition of grantee to clarify that an Indian Tribal government in the affected area may choose to be a grantee, or it may act as a subgrantee under the State receiving the declaration. This merger gives Indian Tribal governments the level of recognition commensurate with the declared States because both can apply directly to FEMA for disaster assistance and is consistent with the other program definitions of the term ''grantee'' throughout FEMA's regulations. This merger into the definition is consistent with FEMA's established practice, recognition of, and commitment to, a government-to-government relationship with Indian Tribal governments. FEMA recognizes the tribal right of self-government that flows from the inherent sovereignty of Tribes as nations, and that Federally-recognized Tribes have a unique and direct relationship with the Federal government. This sovereign status also permits a qualified Indian Tribal government to deal directly with FEMA with respect to Public Assistance funding for which it is eligible under a Presidentially-declared emergency or major disaster declaration. In choosing to act as grantee, the Indian Tribal government assumes the responsibilities of grantees, including the reporting, recordkeeping, and other requirements contained in the program regulations. This choice and assumption also comports with the intent of FEMA's policy, *Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments,* 64 FR 2096 (Jan. 12, 1999), as available at *http://www.fema.gov/government/tribal/natamerpolcy.shtm,* which permits a qualified Tribal government to interact directly with FEMA and act as its own grantee.

Finally, unlike many of FEMA's other regulatory parts, Subpart G lacked a definition of the term ''Indian Tribal government.'' The definition added to 44 CFR 206.201 matches the definition of ''Indian Tribal government'' in other sections of FEMA regulations, such as at 44 CFR 201.2 (Mitigation Planning), 206.430 (Hazard Mitigation Grant Program), and 207.2 (Management Costs).

FEMA will be updating its guidance to the States to reflect the changes made in this rule. When these documents are available, they will be posted to FEMA's Web site at *http://www.fema.gov*, as well as to the docket for this rulemaking at *http://www.regulations.gov*, Docket ID: FEMA–2006–0028.

B. Discussion of Public Comments on the 2006 Interim Rule

FEMA received four comments on the 2006 interim rule. The commenters included one emergency management organization, one State, and two local governments.

1. General Comments

The International Association of Emergency Managers (IAEM) stated that it received responses from 10 of its members, all in favor of the rule. The Georgia Emergency Management Agency (GEMA) stated that it was in favor of the rule because it facilitates a reasonable means of providing sheltering and evacuation support outside the impacted areas without imposing all of the other requirements associated with providing access to Public Assistance funding. The Onslow County North Carolina Emergency Services & Homeland Security Department (Onslow County) stated that the rule allowed non-affected counties to better support affected areas without absorbing the costs directly in their smaller budgets.

These comments reflect one of the main reasons FEMA promulgated the interim rule: to reduce the costs and administrative burden placed on the host-State. By eliminating the requirement that a host-State request and receive an emergency declaration from the President before recouping eligible costs for evacuation and sheltering activities, the host-State is not required to activate the same level of emergency management plans, staff, and resources that are normally required to manage and coordinate operations with FEMA.

2. Self-Evacuees

GEMA expressed concern that communities outside the designated areas that provide sheltering and evacuation for self-evacuees would not be eligible for direct reimbursement from FEMA. GEMA was concerned that the volume of individuals that may choose to evacuate and seek shelter without government support, could overwhelm existing resources and necessitate the opening of mass sheltering operations to provide basic services to the evacuees. For example, displaced individuals may choose to evacuate without government support temporarily to a more distant region due to family connections or other perceived advantages, even if FEMA-funded shelter operations were available in other jurisdictions nearer the impacted area. If a sufficient number of evacuees requiring shelter chose to relocate to areas other than those designated by the impacted communities or by FEMA, then, GEMA asserted, the receiving community should have some recourse to seek financial reimbursement in the event that the number of displaced, non-housed persons necessitates the opening of sheltering services.

FEMA generally does not have the authority to provide grant funds under the Stafford Act outside of the designated areas of the Presidential declaration. If a local government finds itself overwhelmed by self evacuees, but is not included in the State's designated areas, the State may find it is appropriate to request that FEMA include the county among the designated areas under the declaration. As discussed elsewhere in this preamble, FEMA has been delegated the authority to amend emergency and major disaster declarations to add counties when appropriate, and frequently exercises this authority.

If a State without a Stafford Act declaration is burdened with providing sheltering support to self-evacuees, the State may ask the declared State to seek direct Federal assistance from FEMA under the provisions of this rule, or seek reimbursement through a mutual aid agreement with the declared State. Although FEMA recommends mutual aid, in some cases where there is a large-scale event, direct reimbursement from FEMA may be available in accordance with this rule.

3. Mutual Aid Agreements—Burden on Local Governments

The City of Plano was concerned that mutual aid agreements would burden local governments. The commenter stated that it would not be practical for

local governments to administer mutual aid agreements because it would be inefficient and a complex task for local governments to predetermine the host entities across the United States with which it should enter into a mutual aid agreement. The commenter also expressed concern that interstate agreements would be difficult to enforce and that local governments would not have sufficient funds to reimburse the host entities. Further, the City of Plano asserts that cities would be less likely to participate if, as stated in the 2006 interim rule, the eligible applicant will reimburse the providing entity and then be reimbursed by FEMA.

FEMA encourages the use of mutual aid agreements, including the Emergency Management Assistance Compact (EMAC). A mutual aid agreement is an efficient mechanism for providing evacuation and sheltering services when there are a relatively small number of disaster victims. States may enter into post-event mutual aid agreements, which would negate the difficulty local governments may have in determining host entities in advance. A providing entity's costs for evacuation and sheltering services under a mutual aid agreement are eligible for reimbursement by FEMA through the declared State, just as those costs are eligible if the declared State seeks direct assistance from FEMA.

The 2006 interim rule provides, and this rule clarifies, that a State (or Tribal government) may become a host-State when an impact-State requests direct Federal assistance from FEMA, FEMA approves the request, and requests the host-State to provide evacuation and sheltering services outside of the designated area. In this situation, the host-State would receive direct reimbursement from FEMA. This provides an alternate method to mutual aid agreements and may be more appropriate for large-scale events, such as Hurricanes Katrina and Rita, where the impact-State is overwhelmed and lacks the capability to respond to the need.

IV. Regulatory Requirements

A. Administrative Procedure Act

The Administrative Procedure Act requires FEMA to publish notice and consider public comments before promulgating substantive amendments to regulations, 5 U.S.C. 553(b), except when the amendment is a ''rule[] of agency organization, procedure, or practice * * *.'' 5 U.S.C. 553(b)(3)(B). This rule makes one change that was not contemplated in the 2006 interim rule to the manner in which FEMA reimburses a host-State for straight-time force account labor costs incurred in support of evacuation from an impacted State. As discussed throughout this preamble, straight-time force account labor costs are fully reimbursable by FEMA if the service is provided through a mutual aid agreement with the impact-State. This rule amends the regulations to permit these costs to be directly reimbursable by FEMA. The rule does not increase or decrease those costs, but merely changes the method by which host-States obtain the funds. This amendment is a rule of agency organization, procedure, or practice that is exempt from the notice and comments requirements under 5 U.S.C. 553(b)(A).

B. Executive Order 12866, Regulatory Planning and Review

FEMA has prepared and reviewed this rule consistent with Executive Order 12866, Regulatory Planning and Review. This rule has been deemed a significant, but not economically significant regulatory action by the Office of Management and Budget (OMB), and has, therefore, been reviewed by OMB.

This rule results in $51,681 in cost savings for each large scale disaster that requires evacuation and sheltering activities to occur outside the area designated by the major disaster or emergency declaration. These savings are due to administrative savings resulting from States not being required to request Presidential declarations of their own for the event, but being able to act as ''host-States'' under another State's declaration. As a result, States do not need to prepare, and FEMA is not required to review and analyze, those declaration requests to make a recommendation to the President, thereby avoiding the administrative cost associated with such a review. This rule does not change the amount of assistance provided by FEMA for evacuation and sheltering activities, only the procedures by which States seek and receive reimbursement from FEMA for those costs.

Host-State evacuation and sheltering assistance is needed in only rare occurrences, and to date has only occurred twice—for Hurricanes Katrina and Rita in 2005 and Hurricane Gustav in 2008. In 2005, States not directly impacted by Hurricanes Katrina or Rita received a large number of evacuees from the impacted States of Louisiana, Mississippi, and Alabama. Although they were not actually struck by the storm, these States that provided evacuation and sheltering services to evacuees from the impacted States incurred costs. To reimburse these costs, the President declared emergencies in many of these States, thereby making Federal assistance available for the eligible costs they incurred in providing evacuation and sheltering assistance to evacuees from the impacted States. Without obtaining a declaration, costs incurred by these States were not eligible for Federal reimbursement because the evacuation and sheltering assistance was provided outside the designated areas of the impacted States.

At the time Hurricanes Katrina and Rita struck, costs eligible for reimbursement were limited to those incurred within a designated area. Therefore, if a State incurred costs to evacuate and/or shelter residents from another State, that ''host-State'' was required to request and obtain its own emergency declaration to recoup eligible costs. Forty-five of the fifty States received Presidentially-declared emergencies so that they could receive Federal assistance for costs incurred after Hurricanes Katrina and Rita for evacuation and sheltering activities.[4] FEMA provided approximately $752.62 million in Public Assistance funding for reimbursement for host-State evacuation and sheltering activities for Hurricanes Katrina and Rita. The Federal cost share (which was 100 percent) for some States, such as Texas, Arkansas, and Tennessee, where costs totaled $558.28 million, $44.28 million and $33.66 million, respectively, was substantial. Even States geographically distant from States directly struck by Katrina received Federal reimbursement for their costs. For example, Massachusetts received $5.72 million. It became apparent that an emergency declaration was not the appropriate vehicle by which FEMA should reimburse a host-State for sheltering and evacuation activities. Sheltering and evacuation are a limited set of activities that normally, by themselves, would not warrant a Presidentially-declared emergency. FEMA needed a mechanism other than a host-State declaration to allow reimbursement for sheltering and evacuation activities outside of the areas contained in a Presidential declaration.

FEMA published the interim rule to address this need and to allow FEMA to reimburse sheltering and evacuation costs incurred by State, local, and Tribal governments that were located outside of a Presidentially-declared emergency or major disaster area, if the costs were otherwise eligible for Public Assistance funding.

Two mechanisms are provided for reimbursement. Under one mechanism,

[4] Data Source: National Emergency Management Information System (NEMIS), FEMA 2009; Enterprise Data Warehouse, FEMA 2009.

an impacted State may request an entity outside of the designated area to provide evacuation and sheltering services for the impacted State's citizens. The entity that provides the evacuation or sheltering services may seek reimbursement under a mutual aid or similar agreement with the impacted State. Under the other mechanism, the impacted State may seek direct Federal assistance from FEMA, and FEMA may, in turn, request an entity outside of the designated area to provide evacuation and sheltering services for the impacted State. This mechanism would allow the providing entity to directly receive reimbursement of its eligible costs from FEMA.

States that provide evacuation and sheltering services outside of the designated area(s) are no longer required to request and receive an emergency declaration from the President to recoup eligible Public Assistance costs for those services under the 2006 interim rule. States avoid the administrative requirements associated with requesting an emergency declaration or requesting additional designated areas to an existing emergency or major disaster declaration. As a result, FEMA is not required to review and analyze those declaration requests to make a recommendation to the President, thereby avoiding the administrative cost associated with such a review.

The Governor of the State requesting an emergency declaration from the President submits:

- Confirmation that the Governor has executed the State Emergency Plan;
- Preliminary damage assessment;
- State resources committed (a description of State and local resources that have already been committed) and an estimate of Federal assistance needed; and
- Certification that the State will comply with the cost-sharing requirements of the Stafford Act.

States incur costs to gather and submit this information to FEMA. FEMA estimates 33 burden hours for a State to prepare and submit a major disaster or emergency declaration.[4] To determine that figure, FEMA assumes that the 33 burden hours include 9 hours of work spent by management staff and 24 hours by technical staff per major disaster or emergency declaration.

FEMA obtained the national average hourly wages for managerial ($46.91) and technical ($24.03) positions in State government from the Bureau of Labor Statistics.[5] The managerial wage rate was for the ''Chief Executive'' position (standard occupational classification (SOC) code #: 11–1021). The technical wage rate was for the ''First-Line Supervisors/Managers of Office and Administrative Support Workers'' position (SOC code #43–1011) in State government. The hourly wage reflects only the direct cost of employment. FEMA multiplied the wage rates by 1.4 to derive the full employment costs for managerial ($65.67) and technical ($33.64) positions in State governments. Using these figures, FEMA estimates the cost savings experienced by States for not having to request a major disaster or emergency declaration is $1,398. Table 1 details the cost to a State for submitting a major disaster or emergency declaration.

Activities	Managerial ($65.67)	Technical ($33.64)	Hours by activities
Data gathering for Governor's request	0	24	24
Preparing and submitting Governor's request	9	0	9
Total burden hours	9	24	33
Estimated cost savings	$591	$807	$1,398

As part of FEMA's review of a declaration request, FEMA regional staff analyzes the information obtained by joint Federal, State, and local preliminary damage assessments. FEMA's regional summary, regional analysis, and recommendation includes a discussion of State and local resources and capabilities, and other assistance available to meet disaster-related needs. The Administrator of FEMA then submits a recommendation to the President and provides a copy of the Governor's request. FEMA takes the following steps in reviewing a major disaster or emergency declaration request:

- Federal officials, with the assistance of State, local, and Tribal officials, prepare a preliminary damage assessment.
- The FEMA Regional Administrator evaluates the damage and requirements for Federal assistance and makes a recommendation to the FEMA Administrator.
- The FEMA Administrator reviews the Governor's request and the regional analysis and then makes a recommendation to the President.

FEMA estimates that it expends 48 burden hours in reviewing a major disaster or emergency declaration request. The 48 burden hours represent 9.6 hours spent by 5 management-level employees. This time is not consecutive, as FEMA often submits recommendations to the President on declaration requests within the span of a single day. These individuals represent program specialists, attorneys, and other senior officials, and the time includes work to review the Governor's request, generate FEMA's recommendation to the President, and activities that occur after the President grants or denies the Governor's request (such as publishing a **Federal Register** Notice).

FEMA obtained the hourly wages for a managerial (GS 15, Step 5, $65.62), position in the Federal government from the U.S. Office of Personnel Management.[6] This hourly wage includes the locality pay for the area of Washington, DC and reflects only the direct cost of employment. The full employment cost is $91.87. FEMA used the same factor of 1.4 to derive the full cost wage for Federal employees as it used for State employees.

FEMA estimates that the cost to FEMA to review a request for a major disaster or emergency declaration and to make a recommendation to the President is $4,410 (= $91.87 × 48). Therefore, the total administrative cost savings both to FEMA and State governments per major disaster or

[4] 74 FR 36498 (2009), Collection of Information Notice, The Declaration Process. On an annual basis, FEMA estimates 56 respondents average 6 responses per year at 33 hours per response, totaling an estimated 11,088 burden hours per year for submission of a declaration request.

[5] The Bureau of Labor Statistics (2009). ''May 2007 National Industry-specific Occupational Employment and Wage Estimates, NAICS 999200—State Government (OES Designation).'' *http://www.bls.gov/oes/current/naics4_999200.htm#b43-0000.*

[6] U.S. Office of Personnel Management (2009). Salary Table 2009—Washington, DC Area, *http://www.opm.gov/flsa/oca/09tables/html/dcb_h.asp.*

emergency declaration is $5,808 (= $1,398 + $4,410).

Hurricane Gustav in August 2008 has been the only disaster event since the 2006 interim rule was published that required assistance [7] from host-States for sheltering and evacuation. As a result of Hurricane Gustav, FEMA provided approximately $42 million to the nine host-States: Alabama, Arkansas, Indiana, Kentucky, Missouri, New Mexico, Oklahoma, Tennessee, and Texas.[8] After this disaster event, which was FEMA's first opportunity to implement the 2006 interim rule, FEMA realized a need to clarify the eligibility of host-States and the reimbursement process. As a result, this final rule clarifies the eligibility of host-States by adding definitions for the terms ''host-State'' and ''impact-State,'' and by revising the definition of ''grantee.'' The final rule also provides additional information to clarify how a host-State receives a direct Federal grant from FEMA. The final rule clarifies that the host-State must submit a Standard Form SF–424 (Application for Federal Assistance) directly to FEMA to apply for reimbursement, that a host-State must enter into a FEMA/Host-State agreement (similar to a FEMA/State Agreement), and that a host-State is required to prepare any amendments to the State administrative plan to meet current policy guidance. However, these changes are not new requirements for grantees and this rule simply clarifies that these requirements apply to host-States. FEMA does not expect that these changes will result in any additional costs to the States.

FEMA also requires that a host-State must agree in writing to provide evacuation and/or sheltering support to the impact-State. FEMA refers to this agreement as the commitment letter, which the host-State submits to FEMA before the execution of the FEMA/Host-State Agreement. FEMA estimates that it will take one managerial employee one hour to draft and submit this letter. FEMA does not expect to use the host-State sheltering provisions regularly. Federal host-State sheltering assistance has only been needed twice—for Hurricanes Katrina and Rita in 2005, and Hurricane Gustav in 2008. However, for the purpose of this economic analysis, FEMA conservatively estimates that it will be implemented once a year. Using Hurricane Gustav as a ''typical'' example, FEMA expects nine states to submit this letter when FEMA uses host-State sheltering. Therefore, the cost to comply with this new requirement will be $591 (= 1 × 9 × $65.67) per year.

FEMA also added a provision in this final rule that allows the agency to directly reimburse the regular-time salaries and benefits of a host-State's permanently employed personnel that perform evacuation and/or sheltering activities. These costs assist individuals who are not taxpayers in the host-State. In providing these services, a host-State incurs costs for a task that is not otherwise its responsibility, and therefore the Federal government should wholly compensate host-States for those services provided. Currently, a host-State can seek reimbursement for force account labor costs from the impact-State under a mutual aid agreement,[9] but these costs are not reimbursable via a direct grant from FEMA pursuant to 44 CFR 206.228.

Under a mutual aid agreement, the State requesting assistance would reimburse the State providing assistance for eligible regular-time and overtime force account labor costs it incurred. The State requesting assistance would then seek reimbursement of those eligible costs from FEMA, subject to a cost share. Regular-time force account labor is reimbursable under a mutual aid agreement because FEMA considers the eligible costs incurred as contract labor. The new provision in this final rule would allow a host-State to be reimbursed regular-time force account labor costs when it provides assistance under a direct grant with FEMA. This is consistent with the eligible costs that can be reimbursed for services provided under a mutual aid agreement. In addition, it avoids the administrative burden of a host-State seeking reimbursement for these costs through mutual aid from an impact-State when it is otherwise being reimbursed through a direct grant from FEMA. For Hurricane Gustav, FEMA has reimbursed approximately $1 million for regular-time force account costs incurred by three (Alabama, New Mexico, and Oklahoma) of the nine host-States as of April 8, 2009. The other six states have not submitted costs, if any, to FEMA for reimbursement. The total amount obligated will likely increase once FEMA takes into account the regular-time force account costs for the other six host-States. However, this change in the regulation, which allows for straight-time reimbursement via direct grant, will not affect the amount of eligible Public Assistance funding; it merely streamlines the process by which funds reach the host-State. The cost implications of this rule are solely administrative in nature.

Although we have only experienced three disasters to date that have required the type of mass evacuation that called for host-State sheltering and evacuation assistance, to produce conservative estimates of the impact of the rule, FEMA assumes that there will be one large-scale disaster on an annual basis that will require host-States to provide sheltering and evacuation. If there is one large-scale disaster (and nine host-States per large-scale disaster), this rule will result in a reduction in administrative costs of $39,690 to FEMA and $11,991 to the States. Therefore, the annual impact of this rule is estimated at $51,681 per year (= $39,690 + $11,991). Table 2 details the annual impact of the interim final rule. FEMA has determined that this rule will not have a significant economic impact of $100 million or more per year.

TABLE 2—ANNUAL IMPACT OF THE RULE

Assumptions	• Number of large-scale disaster events that will require host-States to provide sheltering and evacuation support per year: 1. • Number of host-States per large-scale disaster (based on Hurricane Gustav): 9.	
	FEMA	State, Local, and Tribal Governments
Administrative Cost per Major Disaster/Emergency Declaration.	−$4,410	−$1,398

[7] As noted above, evacuation and sheltering activities also occurred as a result of Hurricane Ike, but no financial assistance was required from FEMA for those purposes for that event.

[8] This is an estimate as of April 8, 2009. FEMA continues to process reimbursement for the nine host-States for Hurricane Gustav.

[9] Mutual aid agreements where one State or local government reimburses another State or local government for services provided take many forms, including the Emergency Management Assistance Compact. Granting the consent of Congress to the Emergency Management Assistance Compact, Public Law 104–321, 110 Stat. 3877 (Oct. 19, 1996).

TABLE 2—ANNUAL IMPACT OF THE RULE—Continued

The Commitment Letter		$65.67
Number of Large-Scale Disaster Events per Year	1	1
Number of host-States per Large-Scale Disaster	9	9
Administrative Cost per Year	−$39,690 (= −$4,410 × 1 × 9)	−$11,991 [= (−$1,398 + $65.67) × 1 × 9]
Total	= −$51,681 (−$39,690 + −$11,991)	

C. Regulatory Flexibility Act (RFA)

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 (Pub. L. 104–121, 110 Stat. 847, 858–9 (March 29, 1996) (5 U.S.C. 601 note)) require that special consideration be given to the effects of proposed regulations on small entities. The RFA mandates that an agency conduct a RFA analysis 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).'' This rule finalizes an interim final rule and no initial or final regulatory flexibility analysis is required by the RFA.

D. National Environmental Policy Act (NEPA)

The National Environmental Policy Act, Public Law 91–190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) (NEPA), as amended, requires the development of environmental impact statements in Federal actions ''significantly affecting the quality of the human environment.'' FEMA has adopted categorical exclusions from the preparation of an environmental assessment or environmental impact statement for essential assistance or emergency assistance. 44 CFR 10.8(d)(2)(xix)(B), (O); 44 CFR 10.8(d)(2)(ii). Actions taken or assistance provided under sections 403 and 502 of the Stafford Act are also statutorily excluded from NEPA review. 42 U.S.C. 5170b and 5192; 44 CFR 10.8(c)(1). The promulgation of this rule, accordingly, does not require the preparation of either an environmental assessment or an environmental impact statement as defined by NEPA.

E. Executive Order 12898, Environmental Justice

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994, requires agencies to incorporate environmental justice into policies and programs, and to conduct 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 those programs, denying persons the benefits of those programs, or subjecting persons to discrimination because of their race, color, or national origin. FEMA does not anticipate any action under this rule would have a disproportionately high or adverse human health and environmental effect on any segment of the population.

F. Congressional Review of Agency Rulemaking

FEMA will send this rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, (Congressional Review Act), Public Law 104–121, 110 Stat. 873 (March 29, 1996) (5 U.S.C. 804). This rule is not a ''major rule'' within the meaning of the Congressional Review Act.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, 109 Stat. 48 (March 22, 1995) (2 U.S.C. 1501 *et seq.*), requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, adjusted for inflation, in any one year. 2 U.S.C. 1532(a). FEMA has determined that this rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of $100 million or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments.

H. Executive Order 13132, Federalism

Executive Order 13132, Federalism, 64 FR 43255, August 4, 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, 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. This rule involves only principles and criteria that affect the eligibility for and manner in which FEMA reimburses States, Tribes and political subdivisions for costs incurred in support of disaster recovery and does not have federalism implications under Executive Order 13132.

I. Paperwork Reduction Act of 1995

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* requires government agencies to acquire approval from the Office of Management and Budget (OMB) for uses of forms and collections of information from the public. This final rule addresses the collection of four documents: The SF–424 Application for Federal Assistance, which is approved under OMB control number 1660–0025 until August 31, 2011, a State Administrative Plan, a FEMA/Host-State Agreement (similar to the FEMA/State Agreement), and the Commitment Letter. Collections of the State Administrative Plan, FEMA/Host-State Agreement, and Commitment Letter have not been approved by OMB under the Paperwork Reduction Act.

The PRA applies when a request for information is addressed to 10 or more persons. OMB has clarified that, '' 'ten or more persons' refers to the persons to whom a collection of information is addressed by the agency within any 12-month period.'' 5 CFR 1320.3(c)(4). FEMA has determined, based on assessments of past disasters, that the likely number of respondents for host-State applications from non disaster-declared States in a 12-month period will not reach the threshold. FEMA estimates that there will be nine host-State applications and collections that would transpire in a 12-month period using Hurricane Gustav as an ''average'' disaster in which host-State sheltering is needed.

Collection of information from host-States is not expected to trigger the PRA because the number of host-State applicants is not likely to exceed nine. Therefore, FEMA has not sought approval from OMB for the collection of the State Administrative Plan, the FEMA/Host-State Agreement, or the Commitment Letter.

J. 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 may 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.

There is no substantial direct compliance cost associated with this rule; the Public Assistance Program provides funding to impact-States and host-States, including Tribal governments, for sheltering and evacuation activities. This rule would not affect the distribution of power or responsibilities of Tribal governments.

K. 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). This rule will not affect the taking of private property or otherwise have taking implications under Executive Order 12630.

L. Executive Order 12988, Civil Justice Reform

FEMA has reviewed this rule under Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, Feb. 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

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, subparts B and G, as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

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

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; 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. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

§ 206.40 [Amended]

■ 2. In § 206.40, amend paragraph (b) by removing ''disaster-affected'' and adding ''affected'' in its place in the first sentence and by removing ''A disaster-affected'' and adding ''An affected'' in its place in the third sentence.

■ 3. In § 206.201—

■ a. Revise paragraph (e) to read as set forth below;

■ b. Redesignate paragraphs (g) through (l) as paragraphs (j) through (o); and

■ c. Add new paragraphs (g) through (i).

§ 206.201 Definitions

* * * * *

(e) *Grantee.* Grantee means the government to which a grant is awarded, and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, except as provided in § 206.202(f), the State for which the emergency or major disaster is declared is the grantee. However, an Indian Tribal government may choose to be a grantee, or it may act as a subgrantee under the State. If an Indian Tribal government is the grantee, it will assume the responsibilities of the ''grantee'' or ''State'' as described in this part with respect to administration of the Public Assistance program.

* * * * *

(g) *Host-State.* A State or Indian Tribal government that by agreement with FEMA provides sheltering and/or evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a ''Host-Tribe.''

(h) *Impact-State.* The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to § 206.208.

(i) *Indian Tribal government* means any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

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■ 4. In § 206.202, revise paragraph (f) introductory text and paragraph (f)(1) to read as follows:

§ 206.202 Application procedures.

* * * * *

(f) *Exceptions.* The following are exceptions to the procedures and time limitations outlined in this section.

(1) *Host-State Evacuation and/or Sheltering.* (i) *General.* A grant to a host-State for sheltering and/or evacuation support is available under this section when an impact-State requests direct Federal assistance for sheltering and/or evacuation support pursuant to § 206.208. To receive this grant, a host-State must enter into a FEMA–Host-State Agreement, amend its State Administrative Plan pursuant to § 206.207, and submit a Standard Form SF424 *Application for Federal Assistance* directly to FEMA to apply for reimbursement of eligible costs for evacuating and/or sheltering individuals from an impact-State. Upon award, the host-State assumes the responsibilities of the ''grantee'' or ''State'' under this part with respect to its grant award.

(ii) *Force Account Labor Costs.* For the performance of eligible evacuation and sheltering support under sections 403 or 502 of the Stafford Act, the straight-time salaries and benefits of a host-State's permanently employed personnel are eligible for

reimbursement. This is an exception to § 206.228(a)(2).

* * * * *

■ 5. In § 206.208-

■ a. In the first complete sentence of paragraph (a), remove the phrase ''sections 402(4), 403 or 407'' and add the phrase ''sections 402(1) and (4), 403, 407, 502(a)(1), (5) and (7)'' in its place; and

■ b. Add paragraph (c)(3) to read as follows:

§ 206.208 Direct Federal assistance.

* * * * *

(c) * * *

(3) If an impact-State requests assistance in providing evacuation and sheltering support outside an impact-State, FEMA may directly reimburse a host-State for such eligible costs through a grant to a host-State under an impact-State's declaration, consistent with § 206.202(f)(1). FEMA may award a grant to a host-State when FEMA determines that a host-State has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State, and a host-State agrees in writing to provide such support to an impact-State.

* * * * *

■ 6. In § 206.223, revise paragraphs (a)(1) and (a)(2) to read as follows:

§ 206.223 General work eligibility.

(a) * * *

(1) Be required as the result of the emergency or major disaster event;

(2) Be located within the designated area of a major disaster or emergency declaration, except that sheltering and evacuation activities may be located outside the designated area; and

* * * * *

■ 7. In § 206.431, revise the definition of ''grantee'' to read as follows:

§ 206.431 Definitions.

* * * * *

Grantee means the government to which a grant is awarded and which is accountable for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the grant award document. Generally, the State for which the major disaster is declared is the grantee. However, an Indian tribal government may choose to be a grantee, or it may act as a subgrantee under the State. An Indian tribal government acting as a grantee will assume the responsibilities of a ''state'', under this subpart, for the purposes of administering the grant.

* * * * *

Dated: November 9, 2009.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

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