64.0 to MM 65.0, extending the entire width of the river.

(b) *Effective period.* This section is in effect from 8 a.m. on November 18, 2019, through 4 p.m. on November 22, 2019.

(c) *Enforcement period.* This section will be enforced from 8 a.m. through 4 p.m. each day from November 18, 2019 through November 22, 2019.

(d) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry of vessels or persons into this zone is prohibited unless specifically authorized by the COTP or designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Ohio Valley.

(2) All persons or vessels desiring entry into or passage through the safety zone must request permission from the COTP or a designated representative. U.S. Coast Guard Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1–800–253–7465.

(3) Persons and vessels permitted to enter this safety zone must transit at their slowest safe speed and comply with all lawful directions issued by the COTP or the designated representative.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast Notices to Mariners of any changes in the planned schedule.

Dated: November 12, 2019.

**A.M. Beach,**

*Captain, U.S. Coast Guard, Captain of the Port Sector Ohio Valley.*

[FR Doc. 2019–24845 Filed 11–14–19; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2019–0868]**

### Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal and South Branch of the Chicago River between mile marker 296 and mile marker 296.7 during specified times from November 18, 2019 through November 22, 2019. This action is necessary and intended to protect the safety of life and property on navigable waters prior to, during, and immediately after planned US Army Corps of Engineers work at the Electric Barrier. During the enforcement period listed below, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated representative.

**DATES:** The regulations in 33 CFR 165.930 will be enforced from 7 a.m. through 1 p.m. and 3 p.m. through 5 p.m. from November 18, 2019, to November 22, 2019.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email LT Tiziana Garner, Waterways Management Division, Marine Safety Unit Chicago, at 630–986–2155, email address *D09-DG-MSUChicago-Waterways@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone on all waters of the Chicago Sanitary and Ship Canal between mile marker 296 and mile marker 296.7. Enforcement will occur from 7 a.m. through 1 p.m. and 3 p.m. to 5 p.m. from November 18, 2019 to November 22, 2019. During the enforcement period, no vessel may transit this regulated area without approval from the Captain of the Port Lake Michigan or a designated representative. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan, or an on-scene representative.

This notice of enforcement is issued under the authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Captain of the Port Lake Michigan will also provide notice through other means, which will include Broadcast Notice to Mariners, Local Notice to Mariners, distribution in leaflet form, and on-scene oral notice. Additionally, the Captain of the Port Lake Michigan may notify representatives from the maritime industry through telephonic and email notifications. If the Captain of the Port or a designated representative determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the regulated area. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via Channel 16 or at (414) 747–7182.

Dated: November 1, 2019.

**Thomas J. Stuhlreyer,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2019–24821 Filed 11–14–19; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### 44 CFR Part 206

**[Docket ID FEMA–2008–0005]**

**RIN 1660–AA18**

### Disaster Assistance-Federal Assistance to Individuals and Households

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** Under the authority of section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, the Federal Emergency Management Agency provides financial assistance to individuals and households after a Presidentially-declared major disaster or emergency. This rule finalizes, without change, current interim regulations which establish the requirements and procedures for the Individuals and Households Program.

**DATES:** This rule is effective December 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** Mark Millican, FEMA, Individual Assistance Division, 500 C Street SW, Washington, DC 20472–3100, (phone) 202–212–3221 or (email) *FEMA-IA-Regulations@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provides the Federal Emergency Management Agency (FEMA) the authority to administer the Individuals and

Households Program (IHP). *See* 42 U.S.C. 5174. Through the IHP, FEMA provides financial and/or direct assistance to help survivors recover from Presidentially-declared emergencies and major disasters. This help may be in the form of Housing Assistance and/or Other Needs Assistance, which includes personal property losses, medical, dental, funeral, child care, transportation, and other miscellaneous expenses.

Specifically, FEMA provides the following types of Housing Assistance:

*Temporary Housing:* Financial assistance is available to rent a different place to live for a limited period of time. If housing resources are not available and the applicant is unable to make use of FEMA-provided financial assistance, FEMA may provide direct assistance in the form of a manufactured housing unit.

*Housing Repair:* Financial assistance is available to homeowners to repair disaster damage to their primary residence. Assistance is only available to repair damage that is not covered by insurance. The goal is to make the damaged home safe, sanitary, and functional.

*Housing Replacement:* Financial assistance is available to homeowners to replace their primary residence if it was destroyed in the disaster. Assistance is only available for damage that is not covered by insurance.

*Permanent and Semi-Permanent Housing Construction:* In exceptional circumstances, FEMA is authorized to provide permanent and semi-permanent housing construction. If FEMA exercises its discretion to offer this form of disaster assistance, FEMA may provide financial assistance for the construction of a home or may construct the new permanent or semi-permanent housing unit for an individual or household. FEMA may provide this type of assistance only in insular areas outside the continental United States and in other locations when alternative housing resources are not available and no other types of temporary housing assistance are available, feasible, or cost-effective. Assistance is provided only for damage that is not covered by insurance.

44 CFR part 206, subparts D and F regulate the types of IHP assistance, the eligibility requirements for assistance, and the procedures for obtaining assistance.

On September 30, 2002, FEMA published an interim final rule in the **Federal Register**. *See* 67 FR 61446.[1] The interim final rule implemented new statutory authority provided from section 206 of the Disaster Mitigation Act of 2000, Public Law 106–390 (DMA 2000). Section 206 of the DMA 2000 consolidated and streamlined the provision of assistance to individuals, which FEMA previously administered under two separate assistance programs: (1) The Temporary Housing Assistance Program and (2) the Individual and Family Grant Program. Specifically, the interim final rule provided a framework for the new consolidated IHP in 44 CFR 206.110–206.120, as follows:

- Section 206.110 provided a broad overview of the new consolidated program.
- Section 206.111 provided the definitions for terms used throughout sections 206.110–120.
- Section 206.112 provided information on the registration period for the IHP.
- Section 206.113 provided the eligibility factors that individuals must meet in order to qualify for the IHP.
- Section 206.114 provided criteria for continued assistance in the IHP.
- Section 206.115 provided the appeals process and protocols for the IHP.
- Section 206.116 provided information on when and how FEMA would seek recovery of funds from IHP recipients.
- Section 206.117 provided information on the types of housing assistance as well as the eligible costs that are covered under the IHP.
- Section 206.118 provided the procedures that FEMA would follow if FEMA decides to sell temporary housing units that were purchased under 206.117(b)(1)(ii), temporary housing, or direct housing.
- Section 206.119 provided the process for individuals to be eligible to receive financial assistance to address other disaster-related needs.
- Finally, Section 206.120 provided the process and options for States when delivering financial assistance to address other disaster-related needs.

On April 3, 2009, FEMA published a final rule that provided technical, organizational, and conforming amendments to Title 44 of the CFR to reflect the current organization and procedures of FEMA. *See* 74 FR 15328. The final rule had no substantive effect on the regulated public and corrected organization names and addresses, updated Information Collection Approval Numbers issued by the Office of Management and Budget (OMB), removed the text of an Executive Order that was repealed, and made other technical and editorial corrections throughout Title 44. Specifically, in 44 CFR 206.110, 206.111, 206.112, 206.115, 206.117, and 206.120, FEMA updated the titles of various FEMA leadership positions as well as updated the term ''FEMA Office of Inspector General'' to ''DHS Office of Inspector General'' to reflect that FEMA became a component of the Department of Homeland Security in 2003.

On July 30, 2012, FEMA published a notice of proposed rulemaking (NPRM), which addressed the public comments received on the 2002 interim final rule related to housing repair and replacement, the provisions for which are found at 44 CFR 206.117. *See* 77 FR 44562. In addition, FEMA proposed four separate sets of changes in the NPRM. First, FEMA proposed revisions to the interim rule to respond to public comments received on the 2002 interim rule. Second, FEMA proposed changes that were intended to restate the existing requirements more clearly and in greater detail without substantively changing the underlying requirements. Third, consistent with statutory amendments in the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), FEMA proposed removing the housing repair and replacement subcaps which previously limited housing repair assistance to $5,000 and housing replacement assistance to $10,000. Finally, also consistent with statutory amendments in PKEMRA, FEMA proposed adding the term ''semi-permanent'' and removing the term ''remote'' with respect to the eligibility requirements for housing construction pursuant to PKEMRA.

On November 7, 2013, FEMA published a final rule that finalized the NPRM without change. *See* 78 FR 66852.

## II. FEMA's Response to 2003 IHP Implementation Review Report

In February 2003, during the comment period for the Interim Final Rule, FEMA held a meeting with representatives from the five States who first implemented the IHP to identify the best practices and problems or issues that needed corrective actions. An IHP Implementation Review Report was prepared, which outlined the issues discussed and recommendations. None of the issues discussed were specifically pertinent to this rulemaking.

The general topics discussed and the recommendations were related to:

1. The business rules and functionality for the National Emergency Management Information System (NEMIS), which FEMA uses to

[1] FEMA published a correction to the interim final rule on October 9, 2002. *See* 67 FR 62896.

process applications for disaster assistance;

2. Internal and external communications, to include FEMA Helpline numbers and printed Applicant Guides;

3. Addressing unmet needs of disaster survivors through referrals to voluntary agencies;

4. Financial and grants management regarding internal billing processes and procedures;

5. Training needs for field staff administering the program; and

6. Policy development.

All of these topics focused primary on procedural and other aspects of IHP that were beyond the scope of the interim final rule and were addressed in separate actions, such as developing policies, training courses, fact sheets and handouts, or standard operating procedures. Therefore, FEMA is not addressing these issues and recommendations in this final rule.

**III. Discussion of Comments Received on 2002 Interim Final Rule**

In response to the 2002 interim final rule, FEMA received written comments from five States: Texas, Maine, Washington, New York, and Virginia. This section describes the comments received, as well as FEMA's responses to the public's input.

*Comments Regarding Duplication of Benefits (44 CFR 206.110(h))*

Section 206.110(h) in the interim final rule addresses duplication of benefits. Under this section, FEMA will not provide assistance under IHP when any other source has already provided such assistance or when such assistance is available from any other source. The section also states that in the instance of insured applicants, FEMA will provide assistance only when:

1. Payment of the applicable benefits are significantly delayed;

2. applicable benefits are exhausted;

3. applicable benefits are insufficient to cover the housing or other needs; or

4. housing is not available on the private market.

Three State agencies (from Washington, Virginia, and Maine) commented on this section. All three State agencies commented that the term ''significantly delayed'' should be defined in the regulation so that it is applied consistently and equitably and to avoid confusion and undue hardship while the term is being debated at the time of a disaster. The commenters stressed that the definition should be in the regulation as opposed to a policy.

Two State agencies (Washington and Maine) commented that if the estimated damage is below the deductible of the insurance policy, the applicant should not have to wait for a formal denial from the insurance company in order for FEMA to process the application, especially since insurance companies are slow to provide damage reports and produce decisions on eligibility. Rather, the regulation should allow an applicant to certify to FEMA that the estimated damage is below the maximum allowable repair assistance award and to provide a copy of the hazard insurance declaration page that clearly shows the damage is below the insurance deductible. The commenters proposed that if at the time of disaster the applicant estimates the damage to be below the insurance deductible, the applicant should be allowed to produce a copy of the declaration page or policy at the time of inspection in order to receive immediate assistance. In addition, two State agencies (Washington and Virginia) recommended modifying the regulation text to provide assistance to applicants immediately if they produced an insurance declaration page as proof of the limits of the policy.

In support of its comment, a Washington State agency described how, following an earthquake affecting 22 counties in that State, most of the homes had less than $10,000 damage, and since the homes were valued in excess of $100,000, the damage was below the earthquake insurance deductible of 10 percent. The commenter described how the applicant had to send in an insurance denial before FEMA would process the application and that later, FEMA changed its policy and asked the applicant to send in the declaration page of the earthquake policy, if damage was below $10,000. The commenter stated that this further confused the affected public. The commenter concluded that when applicants have to wait for an insurance denial before FEMA will consider their application, the applicants assume falsely that they would have been better off if they had not had the insurance, which has the unintended consequence of applicants dropping their insurance coverage.

Finally, the commenters on the insurance coverage provision also suggested that if FEMA makes the requested changes, FEMA should also make conforming changes to 44 CFR 206.113(a).

*FEMA's Response*

The three State agencies that commented that the term ''significantly delayed'' should be defined in the regulation were in error. The term ''significantly delayed'' was defined in the interim final rule at 44 CFR 206.111 and used at 44 CFR 206.110(h) and 44 CFR 206.113(a)(3). The term ''significantly delayed'' is defined in the interim final rule as more than 30 days.

With respect to the request that FEMA amend the regulation to allow for an applicant to certify to FEMA that the estimated damages are below the maximum allowable repair assistance award and to provide a copy of the hazard insurance declaration page that clearly shows the damage is below the insurance deductible, FEMA has concluded that applicants are not qualified to objectively estimate the total cost of damages, and therefore are not qualified to certify that the estimated cost is below their deductible. Therefore, FEMA did not make any changes based on this comment.

In addition, prior to DMA 2000, FEMA accepted declaration pages from applicants to support their claims for assistance. However, an unintended consequence of this was that applicants were asking their insurance companies for a copy of their declaration page. In turn, the insurance companies classified the applicants' inquiries as claims against their policies, so in some cases, the applicants' insurance premiums were increased. After DMA 2000, FEMA made a policy determination to stop accepting declaration pages from applicants to support their claims for assistance. For this reason as well, FEMA did not make any changes based on this comment.

With respect to the comment from the Washington State agency, FEMA notes that if the applicant has filed a claim with their insurance provider and, through no fault of their own, the coverage has been delayed for 30 days or more and the person has agreed to pay FEMA back when their insurance proceeds arrive, FEMA can provide assistance up to the maximum IHP award. For fiscal year 2020, the IHP maximum award is $35,500 for housing assistance and $35,500 for other needs assistance. 84 FR 55323, Oct. 16, 2019; *see* 44 CFR 206.113(a)(3). In addition, if the applicant's insurance proceeds are less than what FEMA can authorize and the proceeds are insufficient to cover the necessary expenses or serious needs, FEMA can provide the difference up to the maximum award. *See* 44 CFR 206.113(a)(4). Otherwise, FEMA would be competing with the applicant's insurance company to see which entity could issue assistance the fastest. FEMA has to allow the insurance company time to process the applicant's claim.

FEMA does not agree that applicants would have been better off if they had

not had insurance. The Stafford Act only allows FEMA to issue a maximum amount of assistance, which is usually much less than the amount of insurance coverage for which an applicant could insure their dwelling. IHP provides financial assistance and, if necessary, direct assistance to eligible individuals and households who, as a direct result of an emergency or major disaster, have uninsured or under-insured necessary expenses and serious needs, and are unable to meet such expenses or needs through other means. IHP's purpose is not to make an applicant ''whole again.'' FEMA's assistance is intended to help applicants on the road to self-sufficiency. Therefore, FEMA did not propose any changes to the regulations based upon this comment.

*Comments Regarding Conditions of Ineligibility (44 CFR 206.113(b))*

The interim final rule at 44 CFR 206.113(b)(9) indicates business losses are ineligible for IHP grant assistance. One State (Texas) commented that there should be an exception to the rule forbidding IHP grant assistance for business losses. The State proposed that the exception should allow IHP to provide grants for the loss of uninsured work tools for self-employed individuals who are denied loan assistance from the U.S. Small Business Administration (SBA) for financial reasons. The commenter noted that under current regulations, self-employed individuals who suffer work tool loss, and are ineligible for SBA loans, receive no assistance from IHP for this significant loss, and therefore, they fall through the cracks of the recovery program.

*FEMA's Response*

Section 408(e) of the Stafford Act limits financial assistance to medical, dental, child care, funeral expenses, personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster. Financial assistance for ''personal property'' losses provides assistance to repair or replace personal property damaged or destroyed due to a disaster.[2] Financial assistance for ''other necessary expenses'' provides assistance to households with certain disaster-caused miscellaneous expenses; eligible items must be purchased or rented after the incident to assist with the applicant's disaster recovery.[3] FEMA does allow for assistance to replace essential tools, supplies, and equipment owned pre-disaster that are required by an employer as a condition for employment.[4] If a self-employed individual's tools are destroyed due to a disaster, FEMA considers the tools as property of the business and not the individual and thus a business loss. The Small Business Administration Office of Disaster Assistance's provides low interest disaster loans to businesses of all sizes, private non-profit organizations, homeowners, and renters to repair or replace real estate, personal property, machinery and equipment, inventory and business assets that have been damaged or destroyed in a declared disaster.[5] Section 312 of the Stafford Act prohibits duplication of benefits for losses incurred as a result of a major disaster. Since the SBA provides assistance for business related losses, FEMA structured the IHP to provide assistance to individuals and households and not businesses, and thus FEMA chose to not make any changes to the regulations based on this comment.

*Conditions Regarding Appeals (44 CFR 206.115(b))*

Section 206.115 allows for applicants to appeal any determination of eligibility under 44 CFR part 206, subpart D. Section 206.115(b) provides that ''appeals must be in writing and explain the reason(s) for the appeal.'' One State (Washington) recommended that FEMA publish an email address for use in filing appeals, as this would expedite the appeals process, would reduce the possibility of lost regular mail, and would speed up the process of passing misdirected appeals to the right agency.

*FEMA's Response*

FEMA does not provide the address in 44 CFR 206.115(b) since the address to submit appeals may change and FEMA would not want applicants to have to wait for the publication of a document in the **Federal Register** before they would have the updated address to submit their appeal. Instead, FEMA provides applicants with the address that they may submit an appeal to in FEMA's denial letter. FEMA does not provide an email address in the denial letter, as FEMA does not have a secure system in place that would allow appeals to be emailed to FEMA. The only secure server FEMA has in place that can accommodate applicant appeals is the system handling applications for FEMA disaster assistance. If an applicant creates an online disaster assistance account, they can submit an appeal ''electronically'' by uploading appeal documentation into their file.

*Comments Regarding Moving and Storage (44 CFR 206.119(c)(5))*

The proposed rule, in 44 CFR 206.110(c)(5), provided for financial assistance for necessary expenses and serious needs related to moving and storing personal property ''away from the threat of damage including the evacuation'' of such property. In contrast, the interim final rule, in 44 CFR 206.119(c)(5), provided for financial assistance for necessary expenses and serious needs related to moving and storing personal property ''to avoid additional disaster damage.'' Four State agencies (Virginia, New York, Texas, and Washington) commented on this provision, stating that financial assistance should be provided for pre-disaster preventative moving and storage and not only for moving and storage of property after a disaster has occurred. Several commenters noted that the restriction on paying for pre-disaster moving and storage was inconsistent with the Federal and State philosophy of promoting and supporting hazard mitigation measures and that the people should be encouraged to move personal property out of flood zones, if they have time to do so. One commented that it was most desirable that proactive actions be taken to avoid serious harm or injury to person or property.

The commenters stated that the cost of moving and storage was much less than the cost of replacing personal property. One commented that the concept of not paying for taking preventive measures to reduce the potential loss is in direct contrast to the ''insurance model,'' where individuals who sustain losses or may incur additional losses are required to take necessary and effective action to prevent or mitigate further losses and that the reimbursement of expenses incurred to minimize prospective losses prior to or during a disaster would seem to be prudent and should be encouraged and rewarded. The commenter stated that it was inconsistent to not reimburse an applicant for moving items out of harm's way prior to a disaster and then make them purchase mandatory flood insurance coverage for items that could have been safeguarded.

[2] FEMA, Individuals and Households Program Unified Guidance, FP 104–009–3, September 30, 2016, at 105, available at *https://www.fema.gov/media-library/assets/documents/124228.*

[3] Id. at 102.

[4] *Id.* at 107.

[5] Small Business Administration, A Reference Guide to the SBA Disaster Loan Program, May 2015, at 1, available at *https://www.sba.gov/sites/default/files/files/SBA_Disaster_Loan_Program_Reference_Guide.pdf.*

*FEMA's Response*

Section 408(e)(2) of the Stafford Act provides that financial assistance may be provided to address personal property, transportation, and other necessary expenses or serious needs resulting from the major disaster. FEMA interpreted Section 408(e)(2) in 44 CFR 206.119(c)(5) to provide financial assistance under ONA to pay for the cost of storage of personal property while repairs are being made to the primary residence and the cost of returning the property to the applicant's primary residence. FEMA has provided further guidance that eligible expenses for moving and storage assistance include the following expenses: Costs for commercial moving labor, moving truck rental fee, fuel for the rental vehicle, costs for tape and boxes, storage unit fees, and associated sales taxes.[6]

With respect to comments stating that the restriction on paying for pre-disaster moving and storage is inconsistent with the Federal and State philosophy of promoting and supporting hazard mitigation measures, FEMA believes that even if it were to remove the restriction and begin paying for pre-disaster moving and storage expenses it would have limited affect, as it would only apply sporadically and affect a small population of disaster survivors. This is because pre-disaster moving and storage expenses would only apply to specific types of disasters that have advance warning such as hurricanes and lava flows. Unexpected disasters such as earthquakes and tornados would not be eligible for pre-disaster moving and storage expenses because those events occur without sufficient warning to permit sufficient time to move and store. In addition, FEMA's system for processing applications for IHP accepts expenses that occurred post major disaster declaration date. Allowing moving and storage expenses pre-disaster declaration date is an administrative challenge and would require system changes. For these reasons, FEMA has chosen, at this time, to continue to limit moving and storage assistance to assistance provided after the disaster has occurred while repairs are being made to the primary residence. However, FEMA is taking the commenter's suggestion under advisement and it will conduct a policy review to evaluate a possible future change to allow moving and storage expenses pre-disaster declaration date.

With respect to comments stating that the cost of moving and storage was much less than the cost of replacing personal property, FEMA also notes that the insurance industry generally does not reimburse for pre-disaster, preventative moving and storage. In addition, the insurance industry requires individuals who sustain losses or may incur additional losses to take necessary and effective action to prevent or mitigate further losses. The insurance industry generally does not require prevention or mitigation before the loss occurs.

*Comments Regarding Ineligible Costs (44 CFR 206.120(f)(3))*

As discussed in the NPRM and changed by the interim final rule, the Other Needs Assistance (ONA) provision of the IHP may be administered one of three ways: (1) Exclusively by FEMA, (2) administered by the State with substantial FEMA assistance, or (3) by the State with minimal FEMA participation. If the State administers ONA, it may request a grant from FEMA that it uses to administer assistance to individuals and households in the State. In accordance with section 408(f)(1)(B) of the Stafford Act, a State that receives an ONA grant may expend not more than 5 percent of the amount of the grant for administrative costs. These administrative costs typically include conducting grants management oversight; generating financial status reports, weekly program status reports, and other accounting documents; maintaining records; and conducting audits.

Under the terms of 44 CFR 206.120(f)(3), funds provided to the State for administrative costs cannot be used to pay regular time for State employees but may be used to pay overtime for those employees. Three of the State agencies that commented on the rule (Texas, Washington, and New York) disagreed with this provision. One commenter stated that FEMA had arbitrarily implemented a rule that runs contrary to the definition of eligible costs in OMB Circular A–87, Attachment A, General Principles for Determining Allowable Costs. The commenter stated that staff costs, whether they are incurred by an incumbent State employee or newly hired person, should be an eligible expense against grant management if the employee spends most of his/her available hours managing the grant.

Another commenter stated that because overtime is an allowed expense by 206.120(f)(3),[7] and thus recognized as an identifiable and specific function which fully benefits IHP/ONA, regular time should be allowed since it is also an identifiable and specific function which fully benefits IHP/ONA. The commenter also stated that funding the regular time of State employees with another funding source would contradict OMB Circular No. A–87, Attachment A, C.3.c., which addresses overcoming funding deficiencies for Federal grant awards.

Commenters stated that some employees involved in IHP/ONA administration devote 100 percent of their time to the management of the disaster processing operation, and for those that perform other tasks in addition to grant management, any sizeable disaster will require hiring additional staff to backfill the other duties that the grant manager no longer has time to do.

A commenter stated that the current rule, as written, runs contrary to a State's effort to remain involved in ONA and that considerable time and effort has been expended in order to train State staff to be ready and able to respond effectively to disaster declarations. According to the commenter, the current rule encourages States to hire a temporary person to manage the grant, thus allowing their salary to be a legitimate cost against the 5 percent administrative fee; however, hiring someone who knows nothing about the IHP, which needs to be up and running within hours of a declaration, is not justifiable.

*FEMA's Response*

The 2002 interim final rule was not contrary to the definition of eligible costs in OMB Circular A–87. On September 30, 2002, the date that FEMA promulgated the interim final rule (*see* 67 FR 61446), the applicable version of OMB Circular A–87 was the version published in the **Federal Register** on May 17, 1995. *See* 60 FR 26484. The 1995 OMB Circular A–87, Attachment A, E.2.a., states that typical direct costs that are chargeable to Federal awards include compensation for employees for the time devoted and identified specifically to the performance of those awards. However, OMB Circular A–87 does not prohibit FEMA from making

[6] FEMA, Individuals and Households Program Unified Guidance, FP 104–009–3, September 30, 2016, at 111, available at *https://www.fema.gov/media-library/assets/documents/124228.*

[7] The commenter referenced 44 CFR 206.120(e)(3). FEMA construes the citation as a reference to 44 CFR 206.120(f)(3), because section 206.120(e)(3) does not exist and 44 CFR 206.120(f)(3) states that ''Funds provided to the State for the administrative costs of administering Other Needs assistance shall not be used to pay regular time for State employees, but may be used to pay overtime for those employees.''

these types of direct costs ineligible through the regulatory process. *See* 1995 OMB Circular No. A–87, Attachment A, C.1d.

With respect to the commenter's statement that funding the regular time of State employees with another funding source would contradict the 1995 OMB Circular No. A–87 C.3.c., FEMA construes the citation as a reference to the 1995 OMB Circular No. A–87, Attachment A, C.3.c., as the referenced cite, C.3.c., does not exist in the main portion of the 1995 OMB Circular No. A–87. The interim final rule at 44 CFR 206.120(f)(3) does not contradict the 1995 OMB Circular No. A–87, Attachment A, C.3.c., as the regular time of State employees would be funded by the State and would not be charged to other Federal awards to overcome funding deficiencies. FEMA made a program determination to reimburse States that hire additional personnel for the grant because in such cases the costs for the additional personnel hired are directly linked to the management of the IHP/ONA grant award. FEMA determined that it would reimburse the State for the costs for these additional State employees because their salaries are not covered under previously appropriated funds in a State's budget and they were hired simply to work on the management of the IHP/ONA grant award. For the same reasons, 44 CFR 206.120(f)(3) does not contradict the 1995 OMB Circular No. A–87, Attachment A, C.3.c.

Since the interim final rule was promulgated, OMB has issued two additional versions of OMB Circular A–87, which have superseded the previous versions. *See* 69 FR 25970 and 78 FR 78590. The 2004 OMB Circular A–87 version was merely a revision, and while the citations were updated, the language was not changed. In 2013, OMB issued final guidance that superseded and streamlined requirements from OMB Circulars A–21, A–87, A–110, and A–122 (which have been placed in OMB guidance); Circulars A–89, A–102, and A–133; and the guidance in Circular A–50 on Single Audit Act follow up. *See* 78 FR 78590. The purpose of this consolidation was to provide the aforementioned circular in a streamlined format that aims to improve both clarity and accessibility.

*Comments Regarding Ineligible Costs (44 CFR 206.120(f)(3)) and Federalism*

One commenter also added that the interim final rule appears to be a subtle attempt to encourage the States to let FEMA administer the grants. The commenter stated that the rule may, therefore, have federalism implications.

*FEMA's Response*

As discussed under the Federalism heading of the preamble, a rule has federalism implications if it has a substantial direct effect on the States, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. This regulation clearly leaves the decision whether to administer (or apply for) ONA to the States. ''Subtle encouragement'' to participate voluntarily in a Federal program, whether intended or not, does not rise to the level of a rule with federalism implications. The regulatory text in question does not require States to participate in the program, mandate that FEMA administer the program, prohibit States from administering the program, or limit the policymaking discretion of the States with respect to whether they may or may not administer the program. States are free to administer the grants; however, FEMA will not fund the regular salaries of State employees, for the reasons stated above.

*Comments Regarding Recovery of Other Needs Assistance Funds (44 CFR 206.120(f)(5))*

Section 206.120(f)(5) requires the States to recover ONA funds from applicants who obtained the funds through fraud, who expended the funds for unauthorized items or services, who expended the funds for items for which assistance is received from other means, and from applicants to whom the award was made in error. Four State agencies (Texas, Washington, Maine, and New York) commented that the States should not be responsible for recovering ONA funds when the recovery is necessary due to FEMA error, for example when a grant is issued erroneously by FEMA's automated determination process. One State agency proposed that, since many States use the ''AUTO–D'' option, which is based on the FEMA inspection reports and business rules set up in NEMIS, the following language should be added to 44 CFR 206.120(f)(5): ''FEMA will be responsible for recovering assistance awards from applicants when an award has been mistakenly made as a result of a FEMA processing error.'' The commenter added that the State administrative ''cost to recover funds runs two to three times more than the cost of issuing an award. Under the current FEMA policy, the administrative costs are deducted from the total Federal outlay, which means the States are not compensated (five percent administrative costs) for moneys recovered.'' The commenter noted that requiring the States to recover award moneys for Federal mistakes results in use of State funds to correct Federal errors, which is punitive to the States.

*FEMA's Response*

FEMA inserted 44 CFR 206.120 into the interim final rule to address the financial management principles that FEMA would use to implement the ONA portion of the IHP. Even before FEMA published the proposed IHP rule, a number of States had expressed a desire to actively participate in the administration of IHP. The comments that FEMA received on both the proposed and interim final rule indicated that the States wanted opportunities to be active partners in the administration of the new program. One component in the administration of the IHP is the recovery of funds that were issued in error. Federal agencies are required to take action to identify and recover improper payments, regardless of whether the payments were made in error or obtained by fraud.[8] In addition, by statute, applicants must return funds to FEMA when the assistance provided by FEMA duplicates assistance from another source.[9] And the generally applicable IHP regulations, which apply regardless of which entity administers IHP, require applicants to return funds when such funds were provided in error, were spent inappropriately, or were obtained through fraudulent means.[10] When a State is administrating the ONA portion of the IHP, FEMA provides a grant to the State, territorial, or Tribal government and they are responsible for all tasks associated with the administration of ONA. The State, territorial, or Tribal government provides assistance to applicants, and FEMA is responsible for reimbursing the State, territorial, or Tribal government for its portion of the cost share. The State, territorial, or Tribal government may utilize 5 percent of the grant toward administrative costs, including the costs of reimbursement. Because the State, territorial, or Tribal government are the entities who made the decisions regarding whether an applicant was eligible for ONA funds and have the records regarding who was awarded ONA funds, the State, territorial, or Tribal government are ultimately the party that must be responsible for recovering funds that were issued in error.

[8] The Debt Collection Act of 1996, Public Law 104–34; 31 U.S.C. 3711(a).

[9] Section 312(c) of the Stafford Act, 42 U.S.C. 5155(c); 44 CFR 206.191.

[10] 44 CFR 206.116(b).

Additionally, as a result of cost-share requirements, 25 percent of the funds that were issued in error are actually State funds that need to be returned to the State. Thus, the State can recover the funds, subtract their portion of funds, and return the remaining 75 percent to the Federal Government.

*Comments Regarding Flood Insurance Purchase Requirement (44 CFR 206.110(k)) and Group Flood Insurance Policy (44 CFR 206.119(d))*

The Flood Disaster Protection Act of 1973, as amended, requires that individuals or households that are located in a Special Flood Hazard Area (SFHA) may not receive Federal assistance for National Flood Insurance Program (NFIP) insurable real and/or personal property damaged by a flood unless the community in which the property is located is participating in the NFIP. *See* 42 U.S.C. 4001–4129. In addition, the National Flood Insurance Reform Act of 1994 and the Riegle Community Development and Regulatory Improvement Act of 1994 state that no Federal disaster assistance may be provided to a person for damage to any personal or residential property who has received flood disaster assistance that was conditioned on the person first having obtained flood insurance and subsequently failed to obtain and maintain flood insurance as required. See 42 U.S.C. 5154a. Pursuant to the flood insurance purchase requirement, individuals and households must buy and maintain flood insurance as a condition of receiving Federal assistance. For purposes of IA, FEMA interprets financial assistance to mean assistance to an individual or household to buy, receive, build, repair, or improve insurable portions of a home and/or to purchase or repair insurable contents. *See* 44 CFR 206.110(k).

Individuals identified by FEMA as eligible for ONA under section 408 of the Stafford Act as a result of flood damage caused by a Presidentially-declared major disaster and who reside in a special flood hazard area may be included in a Group Flood Insurance Policy (GFIP) established under the NFIP. *See* 44 CFR 206.119(d). The GFIP is a policy that is established for each disaster declaration that results from flooding and authorizes the provision of Individual Assistance. FEMA or the State will withhold a portion of ONA funds for such individuals and provide it to the NFIP on behalf of individuals and households who are eligible for coverage. Payments to cover the premium amount for each applicant are paid for a 3-year policy term. The master GFIP policy term is for 36 months and begins 60 days from the date of the disaster declaration. However, individual coverage becomes effective 30 days following the NFIP's receipt of the applicant's name and premium payment from the State, Territory, Tribal government, or FEMA.

Three State agencies (Washington, Virginia, and Texas) commented on the requirement that individuals and households must purchase flood insurance when their GFIP grant ends. Washington and Virginia stated that the requirement to maintain the policy places a disproportionate burden on the poor, as the poor were more likely to buy property in SFHAs because it is the least expensive property in a community, and that the cost of GFIP renewal for such individuals was cost-prohibitive, given their limited resources. Texas stated that, since the penalty for failure to purchase and maintain flood insurance, which is a condition of IHP, is a denial of future disaster assistance, it would be imprudent not to continue to provide GFIP coverage for low income disaster victims.

Three State agencies (Maine, Washington, and Virginia) commented that FEMA should consider changing the GFIP requirement for people who cannot pass an SBA income test. Maine expressed concern that the individuals would become disenfranchised from assistance following the expiration of their GFIP grant and that, unless the financial situations of such individuals improved dramatically, it was unlikely that such individuals would either qualify for SBA programs or be able to pay an NFIP premium following the expiration of the GFIP grant. Virginia also commented that if an individual fails the SBA income test they should be subsidized by a formula based system.

*FEMA's Response*

In the proposed rule, FEMA proposed the elimination of the GFIP. *See* 67 FR 3415. As discussed in the interim final rule, FEMA received comments from States which supported the continuation of the GFIP. *See* 67 FR 61449. The States stated that the basis for their support of the program related to the fact that disaster survivors who qualified for Individual and Family Grant assistance (the precursor program to the IHP) generally had low incomes and were not as able to afford to pay flood insurance premiums as other disaster survivors. *See* 67 FR 61449. Because the penalty for failing to purchase and maintain flood insurance as a condition of receiving disaster assistance under the old Individual and Family Grant Program and under the new IHP is a denial of future disaster assistance, most of the States that commented on FEMA's proposal believed that it would be imprudent not to continue providing GFIP coverage for low income disaster survivors.

FEMA retained the GFIP in the interim final rule based upon the comments FEMA received on the proposed rule as well as the requirement from the National Flood Insurance Reform Act of 1994 and the Riegle Community Development and Regulatory Improvement Act of 1994 (*See* 42 U.S.C. 5154a). But some States questioned the requirement to maintain flood insurance, arguing that it places a disproportionate burden on the poor, since the poor are more likely to buy property in special flood areas because they are the least expensive properties in a community, and that the cost for such individuals is too high. Also, the Stafford Act requires the purchase and maintenance of flood insurance as a condition of receiving future disaster assistance in certain circumstances. *See* 42 U.S.C. 5154a. Therefore, FEMA does not have the discretion to waive the flood insurance requirement. To assist applicants with maintaining flood insurance, as mentioned above, FEMA provides all eligible applicants with GFIP for 3 years. *See* 44 CFR 206.119(d).

*Comments Regarding Executive Order 12898, Environmental Justice*

Two State agencies (Washington and Virginia) commented generally that the interim final rule would ''discriminate covertly'' against the poor. Specifically, these two commenters stated that the housing repair cap of $5,000 and the housing replacement cap of $10,000 have a negative impact on low-income disaster survivors.

*FEMA's Response*

FEMA does not believe that the interim final rule discriminates covertly against the poor. For instance, the interim final rule assisted the poor by retaining the GFIP.

The two comments that FEMA received regarding the housing repair and replacement caps were addressed in the final rule published on November 7, 2013, that removed the caps.

**IV. Final Rule**

FEMA is finalizing the interim final rule implementing 44 CFR 206.110–120 published on September 30, 2002, (67 FR 61446), with the corrections published on October 9, 2002, (67 FR 62896), the technical amendments to 206.110, 206.111, 206.112, 206.115, 206.117, and 206.120 published on

April 3, 2009, (74 FR 15328), and the amendments to 206.117 published on November 7, 2013, (78 FR 66852), without change.

## V. Regulatory Analysis

*A. Executive Order 12866, Regulatory Planning and Review, Executive Order 13563, Improving Regulation and Regulatory Review and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (''Reducing Regulation and Controlling Regulatory Costs'') directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has not designated this rule a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it. As this rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. *See* OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

This final rule will result in no changes to the IHP and FEMA does not anticipate any additional costs. FEMA is not requiring applicants to perform any additional tasks, fill out any new forms, or provide any additional information. It is anticipated that the cost to applicants will not change as a result of this rule. FEMA is not changing the parameters of the program in any way so there is no expectation that the number of applications processed by FEMA would be altered. As such, FEMA's workload will not be impacted.

The IHP provides financial and direct assistance to those who, as the result of a Presidentially-declared emergency or major disaster, have necessary expenses and serious needs they are unable to meet through other means. This aid may include temporary housing, aid to repair or replace housing, permanent or semi-permanent housing construction, and ONA, which provides financial assistance for personal property losses, medical, dental, funeral, child care, transportation, and other miscellaneous expenses. These services and the benefits derived from them are not being altered by this final rule and will continue to exist at their current levels. Since there are no changes to the amount or type of assistance available, there will correspondingly be no change in the benefits currently derived from the IHP.

Similarly, this final rule will not change the number of eligible applicants or the amount of funds expended per applicant. This rule also has no anticipated impact on transfers.

This rule finalizes an interim final rule and addresses outstanding comments received on the September 30, 2002 interim final rule. This final rule makes no changes to the IHP either in response to or independent of those comments. FEMA does not anticipate any changes to the associated costs, benefits, or transfers from this final rule.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA must consider the impact of this proposed regulation on small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. When the Administrative Procedure Act requires an agency to publish a notice of proposed rulemaking under 5 U.S.C. 553, the RFA requires a regulatory flexibility analysis for both the proposed rule and the final rule if the rulemaking could ''have a significant economic impact on a substantial number of small entities.''

This final rule concerns the provision of Federal assistance to individuals and households after a Presidentially-declared emergency or major disaster. Individuals and households are not classified as small entities. A household is defined at 44 CFR 206.111 as ''all persons (adults and children) who lived in the pre-disaster residence who request assistance under this subpart, as well as any persons such as infants, spouse or part-time residents who were not present at the time of the disaster, but who are expected to return during the assistance period.'' This rule does not directly regulate any small entities.

Additionally, while this rule is addressing comments from the September 30, 2002 interim final rule, it is making no changes and imposes no direct costs.

During the public comment period on the January 23, 2002, NPRM, FEMA did not receive any comments contrary to the Regulatory Flexibility Analysis certification provided at that time.

Accordingly, pursuant to section 605(b) of the RFA, 5 U.S.C. 605(b), the head of FEMA certifies this rule will not have a significant economic impact on a substantial number of small entities.

*C. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any notice of proposed rulemaking which implements any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements. The Act exempts any regulation or proposed regulation that ''requires compliance with accounting and auditing procedures with respect to grants or other money or property provided by the Federal Government'' or ''provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government.'' 2 U.S.C. 1503(4). FEMA finds this rule to be exempt from the Act under those provisions.

As reported in the 12866 section, 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. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*D. National Environmental Policy Act*

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 42 U.S.C. 4321 *et seq.,* an agency must prepare an environmental assessment or environmental impact statement for any rulemaking that significantly affects the quality of the human environment. FEMA has determined that this rulemaking does not significantly affect the quality of the human environment and consequently has not prepared an environmental assessment or environmental impact statement.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This final rule finalizes an existing regulation without changing its environmental effect, which meets Categorical Exclusion A3(d).

*E. Paperwork Reduction Act of 1995*

FEMA has determined that this rule will not create a new collection of information or create a revision to an existing collection of information under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3520. All information submitted by applicants seeking IHP housing assistance, including information submitted on appeal, is included in OMB-approved collections.

The following collections related to IHP have been approved by OMB under the following titles and control numbers: ''Disaster Assistance Registration,'' OMB control number 1660–0002, expiration date August 31, 2022, and ''Federal Assistance to Individuals and Households Program (IHP),'' OMB control number 1660–0061, expiration date May 31, 2020. There is no additional paperwork burden as a result of this final rule.

*F. Privacy Act*

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

FEMA, in partnership with other Federal agencies, hosts a single application and resource center at *http://www.disasterassistance.gov* that allows the public to apply for disaster assistance, benefits, and other services within FEMA and other Federal agencies. This application and resource center accepts personally identifiable information about IHP applicants seeking disaster related housing and other needs assistance. The application resource center is included in a Privacy Act System of Records entitled ''Disaster Recovery Assistance Files'' number ''DHS/FEMA–008'' which was published on April 30, 2013, in the **Federal Register** at 78 FR 25282. This final rule would not change the application materials received or result in a new collection of personally identifiable information about individuals.

*G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials. This final rule would not significantly or uniquely affect the communities of Indian Tribal governments, nor would this rulemaking impose substantial direct compliance costs on those communities.

*H. Executive Order 13132, Federalism*

Executive Order 13132, ''Federalism,'' 64 FR 43255, August 10, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action. The disaster assistance addressed by this final rule is provided to individuals and households, and would not have federalism implications.

*I. Executive Orders 11988 and 11990, Floodplain Management and Protection of Wetlands*

Executive Order 11988, ''Floodplain Management,'' 42 FR 26951, May 24, 1977, sets forth that each agency is required to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must

consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The requirements of these Executive Orders apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting land use. This final rule would not have an effect on land use, floodplain management, or wetlands. When FEMA undertakes specific actions in administering IHP that may have effects on floodplain management (*e.g.,* placement of manufactured housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction; Multi-Family Lease and Repair; financial assistance for privately owned roads and bridges), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order. The notice that is required by the Executive Order is provided separately at the time FEMA undertakes the specific action.

*J. Executive Order 12898, Environmental Justice*

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin. FEMA has incorporated environmental justice into its policies, programs, and activities.

The IHP regulations intentionally contain provisions that ensure they would not have a disproportionately high and adverse human health effect on any segment of the population. FEMA received a comment on the interim final rule that stated the interim final rule did not overtly discriminate against disaster survivors based on race, color, or national origin, but that it did discriminate covertly against those who are ''financially challenged,'' and, to the extent that the ''financially challenged'' consist disproportionately of minority groups, one might conclude that an element of the IHP program lacks environmental justice. The commenter stated that the housing repair cap of $5,000 has a gross negative impact on low-income disaster survivors, and results in more low-income disaster survivors returning to unsafe, unsanitary, and/or non-functional homes. The commenter recommended the liberal use of housing replacement assistance to provide additional help for the financially challenged.

FEMA addressed this comment in a NPRM that published in the **Federal Register** on July 30, 2012 (*see* 77 FR 44562), and a final rule that published in the **Federal Register** on November 7, 2013 (*see* 78 FR 66852). The $5,000 subcap is no longer in place and individuals and households may receive up to the full amount of IHP funds ($33,000 for fiscal year 2016) for eligible housing repair and replacement assistance. See 80 FR 62086 (Oct. 15, 2015). This figure is adjusted annually to reflect changes in the Consumer Price Index.

No action that FEMA can anticipate under this final rule would have a disproportionately high and adverse human health effect on any segment of the population. In addition, the rulemaking would not impose substantial direct compliance costs on those communities.

*K. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

FEMA has analyzed this final rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks, 62 FR 19883, Apr. 23, 1997. This rule is not an economically significant rule and would not create an environmental risk to health or safety that might disproportionately affect children.

*L. Executive Order 12988, Civil Justice Reform*

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. *See* Executive Order 12988, 61 FR 4729, Feb. 7, 1996.

*M. 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, as supplemented by Executive Order 13406, Protecting the Property Rights of the American People. *See* Executive Order 12630, 53 FR 8859, Mar. 18, 1988, and Executive Order 13406, 71 FR 36973, June 28, 2006. This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

*N. Congressional Review of Agency Rulemaking*

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders.

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

**List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and

community development, Natural resources, Penalties, and Reporting and recordkeeping requirements.

## PART 206—FEDERAL DISASTER ASSISTANCE

■ Accordingly, the amendments to 44 CFR 206.110–120 of the interim final rule published on September 30, 2002 (67 FR 61446), with the corrections published on October 9, 2002 (67 FR 62896), the technical amendments to 206.110, 206.111, 206.112, 206.115, 206.117, and 206.120 published on April 3, 2009 (74 FR 15328), and the amendments to 206.117 published on November 7, 2013 (78 FR 66852), are adopted as a final rule without change.

**Pete Gaynor,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. 2019–24762 Filed 11–14–19; 8:45 am]

**BILLING CODE 9111–23–P**

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 515

**[Docket No. 18–11]**

**RIN 3072–AC73**

### Licensing, Registration, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission (Commission) amends its rules governing licensing, registration, financial responsibility requirements, and general duties for ocean transportation intermediaries (OTIs). The changes are mainly administrative and procedural.

**DATES:** The rule is effective December 16, 2019.

**FOR FURTHER INFORMATION CONTACT:** Sandra L. Kusumoto, Director, Bureau of Certification and Licensing. *Address:* 800 North Capitol Street, NW, Washington, DC 20573–0001. *Phone:* (202) 523–5787. *Email: bcl@fmc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

By Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on December 17, 2018, 83 FR 64502, the Commission proposed changes to 46 CFR part 515, which governs licensing, registration, financial responsibility requirements, and general duties for OTIs. The changes are necessary because while implementing the extensive revisions to part 515 made in a November 5, 2015 final rule (80 FR 68722), the Commission has identified a number of regulatory provisions where clarification is warranted.

The Commission invited comments on the NPRM, and later extended the comment period from January 12, 2019 to February 22, 2019, 84 FR 2125 (February 6, 2019). The Commission received three comments. After consideration of the comments and for the reasons stated below, the Commission is adopting all but one of the proposed amendments to part 515 without change. The exception is the proposed change to § 515.3, which the Commission is deferring while it considers whether this section of its rules will require further revision in light of the recent statutory changes made by the Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law 115–282 (LoBiondo Act).

### II. Summary of NPRM

The Commission's proposed changes to its current rules were administrative or procedural in nature or would further reduce the regulatory burden on regulated entities. These proposed changes included: (1) Updating the title and scope of part 515 to include foreign-based non-vessel-operating common carrier (NVOCC) registrations; (2) clarifying the requirements for U.S. agents of foreign-based registered NVOCCs; (3) removing the optional paper application process and related reference to fee amounts; (4) adding language to clarify who can be the Qualifying Individual (QI) in partnerships between entities other than individuals; (5) updating and improving processes (renewal, bond, and termination); (6) adding clarifying language regarding the Commission's direct review of applications in certain cases; (7) clarifying the information that sureties are to provide regarding claims against OTIs; (8) adding a requirement that NVOCCs submit their Form FMC–1 prior to being issued a license; and (9) deleting the reference to the availability of the Regulated Person's Index. None of the proposed changes would increase the burden to applicants, licensees, or foreign-based registered NVOCCs.

### III. Summary of Comments

Roanoke Insurance Group Inc. (Roanoke), a provider of surety bonds to OTIs, stated that it endorses and supports the minor administrative modifications the Commission is proposing to part 515. Specifically, Roanoke stated that it believes ''the closer integration between the Tariff and Licensing units during the licensing process, specifically adopting a rule that the [Commission] will not issue the license until the financial responsibility and tariff are in place, is beneficial to the industry.'' Roanoke also had no objection to the proposed clarifications relating to information provided by financial responsibility providers on claims against OTIs.

Distribution-Publications, Inc. (DPI), a tariff publisher, stated in its comments that it agrees ''none of the proposed changes will increase the burden on applicants, licensees or registered foreign-based NVOCCs.'' DPI supports the requirement for NVOCCs to submit the tariff registration form (Form FMC–1) prior to being issued a license and agrees with the Commission that the rule will not add any additional burden to NVOCCs because ''this will merely be a change to the timing of the [tariff publication] requirement.''

The National Customs Brokers and Forwarders Association of America, Inc. (NCBFAA) is a national trade association representing the interests of freight forwarders, NVOCCs, and customs brokers in the ocean shipping industry. The NCBFAA stated that ''the majority of the proposed changes are mainly administrative or procedural and do not raise substantive issues or impose new regulatory obligations on licensees.'' The NCBFAA, however, raised a concern with the proposed changes to § 515.14, namely ''that the duration of an OTI license would be for a period of one to four years, as contrasted with the current three-year initial license period.'' The NCBFAA asserted that ''[a] change of that nature would be both administratively burdensome to the Commission and unnecessarily burdensome to licensees.'' We address this concern below.

### IV. Changes to Part 515

Accordingly, the Commission adopts the changes in the proposed rule as follows:

#### *A. Part 515 Title and Scope*

The final rule adds ''Registration'' to the part heading to reflect that foreign-based NVOCCs have the option of registering or becoming licensed. The rule also includes registration in the description of the scope of part 515 in § 515.1.

#### *B. U.S. Agents for Registered NVOCCs*

The NPRM proposed amending § 515.3 to clarify that licensed OTI agents for foreign-based NVOCCs can be either ocean freight forwarders (OFFs) or NVOCCs. In light of the changes