

(iv) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(vi) Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.

(4) *Procedures.* An applicant for a water quality standards variance shall submit a request to the Regional Administrator of EPA Region 4. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate to EPA's satisfaction that the designated use is unattainable for one of the reasons specified in paragraph (b)(3) of this section. If the Regional Administrator preliminarily determines that grounds exist for granting a variance, he shall provide public notice of the proposed variance and provide an opportunity for public comment. Any activities required as a condition of the Regional Administrator's granting of a variance shall be included as conditions of the NPDES permit for the applicant. These terms and conditions shall be incorporated into the applicant's NPDES permit through the permit reissuance process or through a modification of the permit pursuant to the applicable permit modification provisions of Alabama's NPDES program.

(5) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant did not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067-AC72

Disaster Assistance; the Declaration Process

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule, with request for comments.

SUMMARY: This proposed rule would establish the financial criteria under which a cost-share adjustment would be granted for permanent restorative work and for emergency work unless otherwise adjusted, and caps that cost-share at 90 percent Federal. Secondly, it would phase in the threshold for granting cost-share adjustments to current dollars over a two-year period, and would allow that threshold to be adjusted annually for inflation.

DATES: We invite your comments, which may be submitted on or before May 4, 1998.

ADDRESSES: Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202-646-4536.

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

SUPPLEMENTARY INFORMATION:

Background

In 1985, the State of West Virginia was struck with an extraordinarily severe disaster (753-DR), for which a cost-share adjustment was granted to the normal 75 percent Federal/25 percent non-Federal cost-share of assistance under sections 403 and 406 of the Disaster Relief Act of 1974 (later amended and named the Robert T. Stafford Disaster Relief and Emergency Assistance Act). (For purposes of this rule the Disaster Relief Act and its successor are called the Stafford Act). That disaster had an impact of \$64 dollars (of Stafford Act costs) per capita, based on statewide population. Since Hurricane Hugo in 1989, a number of extraordinary disasters have continued to occur throughout the United States causing significant impact to the local, State, and Federal governments.

FEMA has used the precedent set in the 1985 West Virginia disaster as a gauge to determine when to recommend

to the President that cost-share adjustments be granted. However, in keeping with the supplemental nature of Federal assistance under the Stafford Act, adjustments were granted to the cost-share only in those rare instances when the disaster had an extraordinary impact.

Since 1985, over 435 major disaster declarations have been made under the Stafford Act and its predecessor. Yet, only 32 cost-share adjustments have been granted. Moreover, since Hurricane Andrew occurred in 1992, there have been no cost-share adjustments for permanent restorative work with greater than a 90% Federal share. This also serves to maintain the supplemental nature of Federal disaster assistance, and ensures at least some level of non-Federal cost-share for disaster assistance.

The purpose of this proposed rule would be two-fold. First, it would establish in regulation the financial criteria under which a cost-share adjustment could be granted for permanent restorative work under section 406 of the Stafford Act, and for emergency work under sections 403 and 407 under the Stafford Act, if not otherwise adjusted for the disaster, and caps that cost-share at 90 percent Federal. Secondly, this proposed rule would phase in the threshold for granting cost-share adjustments to current dollars over a two-year period, and would allow that threshold to be adjusted annually for inflation. Since 1985, the threshold for granting cost-share adjustments has been \$64 per capita. In current dollars, that figure would be raised to \$100 per capita. (Per capita costs are based on actual obligations under the Stafford Act only, excluding FEMA administrative costs and the non-Federal cost-share).

This rule would apply only to sections 403, 406, and 407 of the Stafford Act, which stipulate that the Federal share of assistance will not be less than 75 percent of the total eligible costs. The Stafford Act contains no provision for waiver of cost-sharing for the Individual and Family Grant program (section 411), the construction or site development costs at a manufactured home group site (section 408), or the Hazard Mitigation program (section 404). The Federal share of grants under these sections is limited by law to 75 percent of the total eligible costs.

In order to retain the supplemental nature of disaster assistance, the Consumer Price Index for All Urban Consumers published by the Department of Labor has been applied to the 1985 \$64 per capita figure to raise

that threshold to current dollars. The Consumer Price Index is also the measure used to adjust grants annually under the Individual and Family Grant Program (section 411 of the Stafford Act) and the small projects under the Public Assistance Program (section 422 of the Stafford Act.) Under this proposed rule the threshold would be \$100 per capita, and would be adjusted annually for inflation. Since this is such a large increase in the threshold, the adjustment would be made over a two-year period. In FY 1998 the threshold would be increased by \$16 dollars to \$80 per capita statewide. Beginning October 1, 1998, the threshold would be increased to \$100 per capita statewide, with an adjustment made for inflation thereafter.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR part 10. No environmental assessment has been prepared.

Executive Order 12866, Regulatory Planning and Review

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

Paperwork Reduction Act

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

Executive Order 12612, Federalism

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

Executive Order 12778, Civil Justice Reform

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

List of subjects in 44 CFR Part 206:

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

Accordingly, 44 CFR Part 206 is proposed to be amended as follows:

PART 206 SUBPART B—THE DECLARATION PROCESS

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

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

2. Section 206.47 is added to read as follows.

§ 206.47 Cost-share adjustments.

(a) In accordance with the supplemental nature of assistance under the Stafford Act, and to demonstrate the fiscal responsibility of both State and Federal governments, a measure of non-Federal cost-sharing will always be retained. The standard 75 percent Federal and 25 percent non-Federal cost-share ratio will remain in effect for most Presidentially declared major disasters. For extraordinary disasters, the following standard will be used to evaluate whether costs under the Act for assistance to State and local governments should be adjusted. This adjustment applies to permanent restorative work under section 406 of the Stafford Act and to emergency work under sections 403 and 407 of the Stafford Act unless otherwise adjusted.

(b) Beginning in FY 1998 and effective for major disasters declared on or after [the effective date of the final rule] a qualifying threshold of \$80 per capita of State population will be used where individual States are severely impacted by a major disaster. This threshold will be based on actual obligations under the Stafford Act only, and will exclude FEMA administrative costs and the non-Federal cost-share.

(c) Beginning October 1, 1998, a qualifying threshold of \$100 per capita of State population (as adjusted for inflation), will be used where individual States are severely impacted by a major disaster. Thereafter, this threshold will be adjusted annually for inflation using the Consumer Price Index for all Urban Consumers published by the Department of Labor. This threshold will be based on actual obligations under the Stafford Act only and will exclude FEMA administrative costs and the non-Federal cost-share.

(d) Where future cost-share adjustments are authorized, the Federal share of assistance to State and local governments for impacts to public and eligible private-nonprofit facilities may be increased above 75 percent but may not be greater than 90 percent of the total eligible cost. One hundred percent Federal funding may be provided for direct Federal assistance emergency work, or for emergency work under

sections 403 and 407, as conditions warrant.

Dated: January 13, 1998.

James L. Witt,

Director.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AE52

Endangered and Threatened Wildlife and Plants; Notice of Public Hearing and Reopening of Comment Period on Proposed Threatened Status for Howell's Spectacular Thelypody

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), provides notice of a public hearing on the proposed threatened status for *Thelypodium howellii* ssp. *spectabilis* (Howell's spectacular thelypody). In addition, the Service has reopened the comment period to accommodate a public hearing that was requested by the Oregon Cattlemen's Association. All parties are invited to submit comments on this proposal.

DATES: The comment period now closes on April 20, 1998. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held on April 9, 1998, from 6:00 p.m. to 8:00 p.m.

ADDRESSES: The public hearing will be held at the Geiser Grand Hotel, 1996 Main Street, Baker City, Oregon. Comments and materials concerning this proposal should be sent to the Supervisor, U. S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address (see ADDRESSES section) or (208) 378-5243.

SUPPLEMENTARY INFORMATION: