

DEPARTMENT OF LABOR**Employment and Training
Administration****20 CFR Part 625**

RIN: 1205-AB31

**Disaster Unemployment Assistance
Program****AGENCY:** Employment and Training
Administration, Department of Labor.**ACTION:** Final rule.

SUMMARY: The Employment and Training Administration (ETA) of the Department of Labor (Department) is issuing this final rule to clarify eligibility for disaster unemployment assistance (DUA) in the wake of the major disasters declared as a result of the terrorist attacks of September 11, 2001. The Department undertook emergency rulemaking and published an interim final rule on November 13, 2001, that was effective upon publication and which included a post-publication comment period to provide an opportunity for public participation in this rulemaking. This final rule takes into account the comments that were received.

DATES: The interim rule is adopted as final, effective March 6, 2003, except for amendments to §§ 625.5(c)(2) and (c)(3) which will be effective April 7, 2003.

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SUPPLEMENTARY INFORMATION:**I. The Disaster Unemployment
Assistance Program**

Section 410(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5177(a)) sets forth the framework of the Disaster Unemployment Assistance (DUA) Program. The President is authorized by section 410(a) of the Stafford Act to provide to any individual who is unemployed as a result of a major disaster declared by the President under the Stafford Act "such benefit assistance as he deems appropriate while such individual is unemployed for the weeks of such unemployment with respect to which

the individual is not entitled to any other unemployment compensation . . . or waiting period credit." Section 410(a) provides that DUA is to be furnished to individuals for no longer than 26 weeks after the major disaster is declared. (Pub. L. 107-154 amended section 410(a) of the Stafford Act to extend to 39 weeks the availability of assistance to individuals unemployed as a result of the terrorist attacks of September 11, 2001.) Furthermore, for any week of unemployment, a DUA payment (a type of unemployment compensation (UC)) is not to exceed the maximum weekly benefit amount authorized under the applicable state UC law, as specified in the Department's DUA regulations implementing section 410(a) of the Act.

The Department operates the DUA program under a delegation of authority (51 FR 4988, February 10, 1986) to the Secretary of Labor from the Director of the Federal Emergency Management Agency (FEMA). The Secretary of Labor has promulgated and published regulations for the DUA program at part 625 of title 20 of the Code of Federal Regulations. The DUA Program is administered by the states in accordance with an agreement each state has signed with the Secretary of Labor.

**II. Explanation of the Interim Final
Rule**

On November 13, 2001 (66 FR 56960), the Department added, at § 625.5(c), a definition of the phrase "unemployment is a direct result of the major disaster," used in § 625.5(a)(1) and (b)(1) for determining whether a worker's or self-employed individual's unemployment is caused by a major disaster. Section 410(a) of the Stafford Act provides, in pertinent part, that the President is authorized to provide benefit assistance to any individual "unemployed as a result of a major disaster." The Department has consistently interpreted this phrase in its regulations as requiring, for DUA eligibility, that the individual's "unemployment is a direct result of the major disaster." However, that phrase had never been defined in the Department's regulations. (Note that paragraphs (a)(2)-(a)(5) and (b)(2)-(b)(4) of § 625.5 also provide for other circumstances where an individual's unemployment is caused by a major disaster. However, these provisions are not relevant here.)

The terrorist attacks of September 11, 2001, resulting in declarations of major disasters in New York City and Arlington County, Virginia, were of catastrophic proportions. They presented a number of situations the regulations did not contemplate, such as the extended closure of Reagan National

Airport. In order to address these types of situations, the Department defined the phrase "unemployment is a direct result of the major disaster" to clarify eligibility. By defining the phrase "unemployment is a direct result of the major disaster," the Department ensured greater uniformity in applying the standard. This is consistent with the first and second rules of construction of § 625.1(b) and (c) of the DUA regulations, which provide that sections 410 and 423 of the Stafford Act and the implementing regulations must be construed liberally to carry out the purposes of the Act and to assure, insofar as possible, the uniform interpretation and application of the DUA provisions of the Act throughout the United States.

*Definition of "Unemployment Is a Direct
Result of the Major Disaster"*

In the interim final rule, the Department interpreted the phrase "unemployment is a direct result of the major disaster" under paragraphs (a)(1) and (b)(1) of § 625.5 to mean that an individual's unemployment must be an immediate result of the disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the major disaster. This rule also clarified that an individual's unemployment is a direct result of the major disaster if the unemployment resulted from: the physical damage or destruction of the work site; the physical inaccessibility of the work site due to a federal government closure of the work site, in immediate response to the major disaster; or lack of work, or loss of revenues, provided that the employer, or the business in the case of a self-employed individual, prior to the disaster, received at least a majority of its revenue or income from either an entity damaged or destroyed in the disaster, or an entity closed by the federal government in immediate response to the disaster. This rule simply sets forth a definition for determining whose unemployment is a direct result of a major disaster.

In the preamble discussion of the interim final rule, the Department recognized that the terrorist attacks of September 11 had a "ripple effect" throughout the economy, and that many businesses nationwide suffered serious declines due to the effect these disasters had on commerce. However, individuals who became unemployed as a result of the general decline in commerce in response to these major disasters were not unemployed as a "direct result" of the major disasters and thus were not considered eligible for DUA.