

closure of Reagan National Airport, could potentially be eligible for DUA as could a DC taxi driver, the majority of whose revenue came from trips to and from Reagan National Airport.

Other Changes to the Final Rule

The Department notes that it erred in its initial description of the interim final rule when, after describing the limited scope of the rule, it said considerations led “the Department to conclude that workers and self-employed individuals whose work site, for example, is outside a major disaster area, and who no longer have a job because the federal government either closed or took over the job site in response to the major disaster, are potentially eligible for DUA.” (66 FR 56961.) This statement is wrong since the rule was never intended to cover the physical inaccessibility to a place of employment or the lack of work or loss of revenues due to damage, destruction or the closure of entities located outside the major disaster area. As noted earlier in this preamble and as demonstrated by the Department’s subsequent implementation of the rule after publication, what was meant was not a place of employment or entity located “outside the major disaster area” as that term is defined in the regulations, but instead a place of employment or entity located “outside the major disaster site” (i.e., the actual area damaged by the disaster and not the broader jurisdiction, such as a county or city, that is typically designated the major disaster area), but within the major disaster area.

As the interim final rule’s example on taxi drivers and its reference to the closure of Reagan National Airport after the terrorist attacks make clear, the Department intended to cover individuals whose place of employment was located within the major disaster area but which may not have been located at the actual disaster site. Thus, individuals unemployed due to lack of work, or loss of revenues, would be eligible, provided that prior to the disaster, the employer, or the business in the case of a self-employed individual, received at least a majority of its revenue or income from an entity in the major disaster area that was either damaged or destroyed in the disaster, or an entity in the major disaster area closed by the federal, state or local government in immediate response to the disaster.

Since publication of the interim final rule, the Department has acted consistently with this interpretation. Indeed, the state agency, in accordance with our interpretation, denied benefits to Maryland airport workers

unemployed due to the federal government’s closure of municipal airports in the Washington, DC Metropolitan Area, because their place of employment was outside the declared major disaster areas of Arlington, Virginia, and New York City. Moreover, these employees and self-employed individuals did not have employers or businesses that received a majority of income or revenues from an entity that was either damaged or destroyed in the disaster (e.g., the Pentagon), or an entity in the major disaster area closed by the government in immediate response to the disaster (e.g., Reagan National Airport). Therefore, these individuals were ineligible to receive benefits in accordance with the Department’s interpretation. Consequently, in order to correct the error in the preamble of the interim final rule and to clarify the Department’s interpretation, the Department has revised § 625.5(c)(2) and (c)(3) to include the phrase “in the major disaster area” when referencing the place of employment and entities described in those sections.

Effective Date

Because no changes were made to the interim final rule other than to § 625.5(c)(2) and (c)(3), the Department has determined that this final rule will be effective upon publication, except for § 625.5(c)(2) and (c)(3) which will be effective 30 days after publication.

Executive Order 12866

This final rule is a “significant regulatory action” within the meaning of Executive Order 12866 because it meets the criteria of section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Accordingly, this rule was submitted to, and reviewed by, the Office of Management and Budget. It is not “economically significant” within the meaning of section 3(f)(1) of that Executive Order because it will not have an annual effect on the economy of \$100 million or more. Rather, the Department estimates the cost of benefits under this rule for the major disasters of September 11, 2001, to be \$2.205 million and, therefore, projects that the annual cost of benefits under this rule will be far less than \$100 million.

The Department has evaluated the rule and finds it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. The rule will not impact states and state agencies in a material way because it would not impose any new requirements on states.

Instead, the final rule simply clarifies the rules that states use to determine the eligibility of individuals affected by these new types of disasters now affecting the nation, such as the terrorist attacks of September 11, 2001. Also, the federal government entirely finances DUA benefits.

Paperwork Reduction Act

The Department has determined that this final rule contains no new information collection requirements. The existing information collection requirements are approved under Office of Management and Budget control number 1205–0051.

Executive Order 13132

The Department has reviewed this final rule in accordance with Executive Order 13132 regarding federalism. The order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict states’ policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. Because this is a federal benefit program, the Department has determined that the rule does not have federalism implications.

Executive Order 12988

The Department drafted and reviewed this rule in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The rule has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

The Department has reviewed this final rule in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 12875. The Department has determined that this rule does not include any federal mandate that may result in increased expenditures by state, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Accordingly, the Department has not prepared a budgetary impact statement.

Regulatory Flexibility Act

The Department has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The rule sets forth the terms under which states and state agencies, which are not within the