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.

The above considerations apply equally to any major disaster. They led the Department to conclude and instruct state agencies that workers and self-employed individuals whose work site, for example, is within the presidentially-declared major disaster area yet outside the immediate disaster site, and who no longer have a job because the federal government either closed or took over the work site in immediate response to the major disaster, are potentially eligible for DUA. The interim final rule included only employees and self-employed individuals at facilities closed by the federal government in the major disaster area. (For further explanation of this issue, *see* ''Other Changes to the Final Rule'' below.) Examples of eligible individuals in the case of an airport shutdown in the major disaster area included airport employees, owners and employees of restaurants and shops located in airport terminal buildings, and workers or service providers for these and other facilities where the above conditions were met. However, workers at other airports not closed by the federal government were not considered eligible for DUA under the interim final rule. Individuals potentially eligible for DUA also included employees and self-employed individuals who could not perform services or get to their workplace not only because of physical damage to their place of employment but because a federal agency, such as FEMA, took over such site for disaster administration purposes. Similarly, because the federal government could, as an immediate emergency response to the major disaster, close certain facilities such as bridges or tunnels in the major disaster area, employees of those facilities could, therefore, be potentially eligible for DUA.

As noted above, the Department also concluded in the interim final rule that an employee or self-employed individual could be eligible for DUA if the entity in the major disaster area was closed by the government in immediate response to the major disaster or the major disaster caused physical damage to or destruction of an entity in the major disaster area which, before the major disaster, provided at least a majority of the employer's or self-employed individual's revenue or income. Where less than a majority of the employer's or self-employed individual's revenue or income came from that entity, the link to the unemployment was viewed as too tenuous to be considered direct under the regulations. Just as this test would be employed to determine whether employees of suppliers of goods or services to entities physically damaged by the major disaster may be eligible for DUA, so too would that analysis be applicable to employees of suppliers of goods or services to other entities closed or taken over by the federal government in immediate response to the major disaster. Thus, if one of those entities provided at least a majority of the revenue or income of that employer or self-employed individual, the employees of that business or that self-employed individual could be eligible for DUA.

Where it could not be established that at least a majority of the revenue or income of a business or self-employed individual was dependent upon providing goods or services to these entities, DUA eligibility must be denied. For example, a taxicab driver would be potentially eligible for DUA where a majority of his or her business depended on providing transportation services between points which included areas cordoned off because of the physical damage of the major disaster or because facilities were closed or commandeered by the federal government. On the other hand, DUA eligibility should be denied a taxicab driver who cannot establish that a majority of his or her livelihood depended on providing transportation services between points which include areas cordoned off because of either the physical damage of the major disaster or the closing or commandeering of the facilities in the major disaster area by the federal government.

Further, the interim final rule said that DUA is payable only for those weeks of unemployment during the disaster assistance period that continue to be the direct result of the major disaster. Therefore, if the state agency finds that an eligible DUA applicant's unemployment can no longer be directly attributed to the major disaster, the applicant is no longer unemployed as a direct result of the disaster and is no longer eligible for DUA.

III. Comments on the Interim Final Rule

The Department received comments on the interim final rule from a furloughed airline worker, three state workforce agencies (Iowa, Kansas, and New Jersey), three labor organizations, and five employee advocacy organizations. The three labor organizations were the American Federation of State, County, and Municipal Employees (AFSCME), the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO), and the Service Employees International Union (SEIU). The five employee advocacy organizations included the Urban Justice Center, New York City, on behalf of the Chinese Staff and Worker's Association; the National Employment Law Project, New York City and Oakland, California; the Greater Boston Legal Services; the New York Taxi Workers' Alliance, New York City; and the Workforce Organizations for Regional Collaboration, Arlington, Virginia. In addition, a state senator from New York submitted a letter in support of the comments of the National Employment Law Project. The Department discusses and responds below only to those comments received that were relevant to the regulatory section we added in the interim final rule, § 625.5(c).

The furloughed airline worker submitted a comment requesting an amendment to the interim final rule to include coverage of employees of airlines affected by the government-imposed restrictions on air traffic. The Department realizes that the airline industry, as well as this individual, suffered economically as a result of the ''ripple effect'' the September 11 attacks had on the overall economy. While the Department is sympathetic to the effect the terrorist attacks had on the airline industry and others, the interim final rule was promulgated to specifically define the phrase ''unemployment as a direct result of the major disaster,'' as used in the existing DUA regulations. The Department never intended to define the phrase to include individuals unemployed due to an economic ''ripple effect'' of a major disaster, as this would inappropriately broaden the rule's scope to include individuals indirectly affected by the disaster. In drafting the interim final rule, the Department did take into account the fact that certain individuals and businesses located outside the disaster area could be severely affected by the loss of economic activity within the disaster area. Therefore, the phrase ''unemployment as a direct result of the major disaster'' is defined to include self-employed individuals, as well as employees of businesses, suffering from unemployment because their employers or businesses received, before the disaster, more than fifty percent of revenues from businesses damaged, destroyed, or closed by the government within the major disaster area. The regulation, however, was never intended to cover all of the possible economic effects of a disaster.

Comments From State Workforce Agencies

All the comments from the state workforce agencies, and nearly all the labor organizations and worker advocacy groups, complimented the Department for the provisions included in the interim final rule. The Kansas agency supported the amendment made by the interim final rule. Likewise, the Iowa agency supported the amendment, focusing particularly on how the rule would likely help small businesses in Iowa that serve farmers affected by major disasters.

The New Jersey agency also supported the amendment but requested a broadening of the rule to ensure DUA eligibility for individuals not generally eligible for regular UC. Specifically, New Jersey suggested that individuals who worked exclusively out of an airport, such as limousine drivers, would be excluded from DUA eligibility unless the airport was closed or taken over by the government. While that may be true, the Department notes that the amendment expands the coverage for DUA to include the unemployment of employees and self-employed individuals where, before 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 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. Thus, if a limousine driver lost the majority of his or her business due to the government closing an airport, or if the driver obtained the majority of his or her income from serving guests at hotels and the hotels were closed because of a major disaster, then the individual would be potentially eligible for DUA. The Department recognizes that the amendment is more restrictive than New Jersey advocates. However, the Department chose not to broaden the scope of the rule as this would overextend the rule's coverage to include individuals indirectly injured by the major disaster, such as workers secondarily affected by the economic ''ripple effect'' after the terrorist attacks of September 11, 2001, as discussed above with regard to the airline industry.

Comments From Labor and Employee Advocacy Organizations

Nearly all of the comments from labor and employee organizations advocated an expansion of the DUA program to reach more workers. The three labor organizations and the five employee advocacy organizations, along with a New York state senator, submitted nearly identical comments on one or more of the following issues:

1. Workers otherwise covered by DUA should not be denied DUA when the order rendering the business inaccessible is issued by a private or public/governmental entity other than the federal government in response to security concerns or the provision of services related to a disaster.

2. Workers unemployed because their company did business with an entity damaged or destroyed by the disaster should receive DUA when the loss of revenue from the company ''contributed importantly'' or ''contributed significantly'' (rather than losing the majority of one's income) to the employer's decision (or self-employed individual's decision) to order a layoff or reduce hours of work.

3. The regulations should abandon the requirement that a worker, initially determined as separated from work due to the disaster, must establish on a weekly basis that his or her unemployment is still the direct result of the disaster.

4. Because the interim final rule expanded coverage and was a shift in policy, any workers who had been denied DUA prior to the publication of the interim final rule, as well as all individuals filing for DUA after the rule's publication should be entitled to receive DUA retroactively.

In addition, the AFL–CIO argued that the regulations should provide that a worker's immigration status is immaterial to DUA eligibility. The AFL–CIO also advocated expanding DUA eligibility to include individuals employed in areas near, but not specifically designated as, disaster areas.

The Department agrees, in part, with the first proposal to amend § 625.5(c) to cover workers due to business closures by private or public and governmental entities in the major disaster area in response to security concerns or the provision of services related to that disaster. The interim final rule added paragraphs (c)(2) and (c)(3) to § 625.5 which expanded the circumstances under which individuals would be considered unemployed as a direct result of the disaster. The Department intended that individuals would be covered if their unemployment resulted from their place of employment in the major disaster area being closed or taken over by the federal government in immediate response to that disaster, or where, 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 that disaster, or an entity in the major disaster area was closed by the federal government, in immediate response to that disaster resulting in lack of work or loss of revenues. A major reason for adopting these provisions was that, as far as the Department knows, there had never been a disaster situation where the federal government, as a result of the disaster, closed facilities separate and apart from the actual disaster site. The Department wanted to ensure that individuals unemployed at those sites due to a federal closure were considered unemployed as a direct result of the major disaster. In all major disasters, geographic areas within a state (generally counties and sometimes cities) are designated as the major disaster areas. The Department has consistently held that state and local governments' decisions affecting the closure of businesses and the health and safety of individuals determine whether individuals are unemployed as a direct result of the major disaster. For example, if a city waste treatment facility were flooded and the city ordered certain businesses in an area of the city to close because the waste treatment facility was not functioning as a result of the disaster, the Department would conclude that out-of-work individuals from those businesses were unemployed as a direct result of the disaster. The Department did not intend to suggest that the rights of state and local governments to manage disasters in their jurisdictions were limited by this regulation, which defines unemployment as a direct result of the disaster. Consequently, in order to be clear that the amendment covers such government closings, the Department has revised § 625.5(c)(2) and (c)(3) to include closures by the federal, state, or local government.

The Department, however, does not believe it sensible to add businesses closed by private entities, unless such entities were advised or required by governmental agencies to close for health or safety reasons related to the disaster. Indeed, while a private entity could decide to close down its operations for any reason, only governmental agencies have authority to force a closure of facilities or businesses due to a disaster, usually to protect the health and safety of the populace. Given that government agencies are vested with such responsibility, the Department believes it best to limit coverage to individuals unemployed

due to governmental actions or recommendations designed to protect the public's health and safety, as opposed to purely private closures.

The Department declines to accept the second proposal to amend § 625.5(c) to consider an individual unemployed due to the major disaster if that individual's loss of income ''contributed importantly'' or ''contributed significantly'' to his or her unemployment rather than as provided in the regulation, which requires that an individual received at least a majority of his or her revenue or income from the entity that was damaged, destroyed, or closed by the federal government. The genesis of this majority of revenue or income test came in the form of a 1994 Advanced Notice of Proposed Rulemaking (59 FR 63670, 63672), where, for purposes of § 625.5(a)(1), (a)(3), (b)(1) and (b)(3), the Department proposed that a worker or self-employed individual was considered unemployed due to the disaster where (s)he was unable to perform more than 50 percent of his or her usual and customary services that were being performed prior to the major disaster because sales to customers coming to the job site or work location were substantially reduced as a direct result of the major disaster. While this interpretation was never adopted as a regulation, the Department did apply it informally on a case-by-case basis. The Department then revised and formalized this interpretation in the interim final rule to include such unemployment due to lack of work, or loss of revenues, where 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 that disaster, or an entity in the major disaster area closed by the federal government in immediate response to that disaster.

This majority of income or revenue test is a defined amount, can be determined with a good degree of accuracy, utilizes a simple calculation, and is an equitable standard applicable to all claimants. On the other hand, the terms ''contributed importantly'' or ''contributed significantly'' do not easily translate into a quantifiable amount, thus lacking the relative ease and certitude of the majority of income or revenue test. Adopting such subjective criteria would be administratively difficult for state workforce agencies dealing with the exigencies of a disaster to implement. While such a ''contributed importantly'' test is used under the Department's Trade Act programs (19 U.S.C. 2272(a)(3) and 2331(a)), the authorizing statute permits the agency 60 days under the Trade Act and 30 days under the expiring North American Free Trade Agreement transitional adjustment assistance program to make this determination (19 U.S.C. 2273(a) and 2331(c)(1)), and the recent amendments to the Trade Act now change that time period to 40 days. Trade Act of 2002, Public Law 107–210, section 112(b). Under DUA, however, the Department believes that a bright line test is necessary to ensure benefit determinations can be made quickly so assistance can be given out expeditiously to those in need. Furthermore, several of the comments criticized this ''majority of income or revenue'' standard in the interim final rule as burdensome on claimants because it limits them to producing tax and financial documents. The Department disagrees and notes that all evidence (*e.g.*, affidavits, employer statements, and other credible evidence) will be considered in establishing a claim and not only typical financial records. Thus, the Department believes that the ''majority of income or revenue'' test is fair and provides a more workable standard.

The Department also declines to adopt comment three to amend § 625.5(c) to eliminate the requirement for establishing on a weekly basis that a claimant's unemployment is still the direct result of the major disaster. Those advocating this comment believe that eliminating this requirement would make DUA more like the regular UC program, in that once a claimant qualifies for benefits (s)he no longer is required to establish that the unemployment is a result of the original layoff or separation. However, the Department notes that this weekly requirement follows the statutory requirements of section 410(a) of the Stafford Act whereby ''[t]he President is authorized to provide to any individual unemployed as a result of a major disaster 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.'' 42 U.S.C. 5177(a). The Department cannot adopt this proposal as it contravenes the DUA authorizing statute, which establishes eligibility for benefits on a weekly basis.

Comment four on the retroactive payment of DUA did not propose a change to § 625.5(c) but instead addressed the administration of the new DUA regulatory provision. While advocates for comment four requested retroactive benefits due to the change in DUA eligibility, several commenters also requested aggressive publicity of these new eligibility rules. In response to these comments, the Department notes that it advised the state agencies in New York and Virginia, in a memorandum before publication of the interim final rule, of the Department's position on both retroactive and partial payments and that individuals could be eligible in accordance with the yet unpublished rule. Thus, the Department made it clear that New York and Virginia were to apply the principles of this rule to all claims arising out of the September 11 terrorist attacks. New York, for example, made significant efforts to publicize DUA eligibility criteria using various media in several different languages.

Lastly, the AFL-CIO made two separate comments. They proposed paying DUA to all aliens, whether legally in the United States or not. However, the Department cannot adopt this proposal due to limitations placed on the DUA program by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Section 432 of the PRWORA (Pub. L. 104–193), as amended, provides that only aliens falling within the definition of ''qualified aliens'' are eligible for federal public benefits, which include benefits under the DUA program. Therefore, DUA payments to other than qualified aliens are prohibited.

The AFL-CIO also advocated expanding DUA eligibility to include areas close to, but not specifically designated as, major disaster areas. They posited that workers in the District of Columbia who were adjacent to the disaster area in Arlington, Virginia were ineligible for DUA even though they may have been negatively affected by the disaster. The AFL-CIO suggests broadening coverage because the disaster hurt, in a general way, the District of Columbia's economy, so that the unemployed in DC should be eligible to receive DUA. The Department has sought to limit coverage to a ''direct result'' of the disaster, since the ''ripple effect'' on the DC economy and other adjacent jurisdictions would be endless. The Department notes that the interim final rule at § 624.5(c)(3) allows for the coverage of individuals outside the major disaster area when they can establish that a majority of their income or business revenue came from an entity in the major disaster area either damaged or destroyed in the disaster, or closed by the federal government in immediate response to the disaster. Thus, an independent contractor in Washington, DC, who lost a majority of its income due to the Pentagon attack or

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

definition of ''small entity'' under 5 U.S.C. 601(6), will pay federal benefits. Benefits provided under section 410(a) of the Stafford Act are fully funded by the federal government. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

The Department certifies that this final rule has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. The Department concludes that the rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by providing benefits to more individuals whose households have been affected by major disasters.

Small Business Regulatory Enforcement Fairness Act of 1996 and Congressional Notification

The Department has determined that this final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. With regard to the revised sections of the final rule, the Department will submit to each House of Congress and to the Comptroller General a report regarding the issuance of this final rule prior to the effective date of the rule, which will note that this rule does not constitute a ''major rule'' for purposes of this Act.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, ''Disaster Unemployment Assistance (DUA).''

List of Subjects in 20 CFR Part 625

Disaster assistance, Labor, and Unemployment compensation.

Words of Issuance

Accordingly, the interim final rule amending part 625 of chapter V of title 20, Code of Federal Regulations, which was published at 66 FR 56960 on November 13, 2001, is adopted as a final rule with the following changes to § 625.5(c)(2) and (c)(3):

PART 625—DISASTER UNEMPLOYMENT ASSISTANCE

1. The authority for part 625 continues to read as follows:

Authority: 42 U.S.C. 1302; 42 U.S.C. 5164; 42 U.S.C. 5189a(c); 42 U.S.C. 5201(a); Executive Order 12673 of March 23, 1989 (54 FR 12571); delegation of authority from the Director of the Federal Emergency Management Agency to the Secretary of Labor, effective December 1, 1985 (51 FR 4988); Secretary's Order No. 4–75 (40 FR 18515).

2. Section 625.5(c)(1) is republished, and paragraphs (c)(2) and (c)(3) are revised to read as follows:

§ 625.5 Unemployment caused by a major disaster.

* * * * *

(c) *Unemployment is a direct result of the major disaster.* For the purposes of paragraphs (a)(1) and (b)(1) of this section, a worker's or self-employed individual's unemployment is a direct result of the major disaster where the unemployment is an immediate result of the major disaster itself, and not the result of a longer chain of events precipitated or exacerbated by the disaster. Such an individual's unemployment is a direct result of the major disaster if the unemployment resulted from:

(1) the physical damage or destruction of the place of employment;

(2) the physical inaccessibility of the place of employment in the major disaster area due to its closure by or at the request of the federal, state or local government, in immediate response to the disaster; or

(3) lack of work, or loss of revenues, 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.

Signed at Washington, DC, on February 27, 2003.

Emily Stover DeRocco,

Assistant Secretary of Labor.

[FR Doc. 03–5271 Filed 3–5–03; 8:45 am]

BILLING CODE 4510–30–P