DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2014–0005]

RIN 1660–AA83

Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: FEMA proposes to revise its regulations to comply with Section 1109 of the Sandy Recovery Improvement Act of 2013 which requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the Individual Assistance factors FEMA uses to measure the severity, magnitude, and impact of a disaster.

DATES: Comments must be received on or before January 11, 2016.

ADDRESSES: You may submit comments, identified by docket ID FEMA–2014–0005, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, 500 C Street SW., 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the Privacy Notice link on the homepage of *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov,* click on ''Advanced Search,'' then enter ''FEMA–2014–0005'' in the ''By Docket ID'' box, then select ''FEMA'' under ''By Agency,'' and then click ''Search.'' Submitted comments may also be inspected at the Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., 8NE, Washington, DC 20472–3100.

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:

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I. Public Participation

We encourage you to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, identify the agency name and the docket ID for this rulemaking, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, or delivery to the address under the **ADDRESSES** section. Please submit your comments and material by only one means.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal e-Rulemaking Portal at *http://www.regulations.gov,*

and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via a link on the homepage of *www.regulations.gov.*

Viewing comments and documents: For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at *http://www.regulations.gov.* Background documents and submitted comments may also be inspected at the Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW., 8NE, Washington, DC 20472–3100.

II. Executive Summary

A. Purpose of the Regulatory Action

1. The Need for the Regulatory Action and How the Action Will Meet the Need

On January 29, 2013, the President signed the Sandy Recovery Improvement Act of 2013 (SRIA) into law (Pub. L. 113–2). Section 1109 of SRIA requires FEMA in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the factors found at 44 CFR 206.48 that FEMA uses to determine whether to recommend provision of Individual Assistance (IA) during a major disaster. These factors help FEMA measure the severity, magnitude, and impact of a disaster.

FEMA is proposing this rule to comply with SRIA and to provide clarity on the IA declaration factors that FEMA currently considers in support of its recommendation to the President on whether a major disaster declaration authorizing IA is warranted. The additional clarity may reduce delays in the declaration process by decreasing the back and forth between States and FEMA in the declaration process. FEMA is also proposing new factors on Fiscal Capacity and Resource Availability to provide additional context on potential disaster situations. The proposed rule would also satisfy the requirements outlined above in Section 1109 of SRIA.

2. Legal Authority

FEMA has authority for this proposed rule pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). 42 U.S.C. 5121 *et seq.* Section 401 of the Stafford Act lays out the procedures for a declaration for FEMA's major disaster assistance programs when a catastrophe occurs in a State. The specific changes proposed by this NPRM are intended to comply with Section 1109 of the Sandy Recovery Improvement Act of 2013. Public Law 113–2.

B. Summary of Major Provisions

FEMA proposed to revise the factors found at 44 CFR 206.48 that FEMA uses to determine whether to recommend provision of Individual Assistance during a major disaster. The current factors found at 44 CFR 206.48 for Individual Assistance include the following factors: (1) Concentration of Damages, (2) Trauma, (3) Special Populations, (4) Voluntary Agency Assistance, (5) Insurance, and (6) Average Amount of Individual Assistance by State.

FEMA is proposing to revise the current factors by providing additional clarity regarding the considerations FEMA evaluates when making a recommendation on whether Individual Assistance is warranted for a major disaster declaration. FEMA is proposing to revise 44 CFR 206.48 to include the following factors: (1) State Fiscal Capacity and Resource Availability, (2) Uninsured Home and Personal Property Losses, (3) Disaster Impacted Population Profile, (4) Impact to Community Infrastructure, (5) Casualties, and (6) Disaster Related Unemployment. As is currently the practice, FEMA will continue to use a myriad of factors and data to formulate its recommendations to the President on major disaster declarations that authorize IA. No single data point or factor would determine on its own FEMA's ultimate recommendation nor would any single factor necessarily affect the President's ultimate determination of whether a major disaster declaration authorizing IA is warranted. FEMA purposely declined to be more specific in areas of the proposed rule so that FEMA does not limit Presidential discretion for declaring a major disaster declaration that authorized Individual Assistance because the parameters for a major disaster declaration can change from Administration to Administration. FEMA wants to ensure that we retain as much flexibility as possible so that we can conform to what the President wants in their disaster declaration recommendations. The proposed factors would not limit the President's discretion regarding major disaster declarations.

III. Background

A. The Federal Disaster Declaration Process

When a catastrophe occurs in a State, the State's Governor may request a Presidential declaration of a major disaster [1] pursuant to Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). 42 U.S.C. 5170; 44 CFR 206.36(a). Such a request must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. 42 U.S.C. 5170.

The capacity to respond to a catastrophe varies from State to State. The initial decision on whether supplemental Federal assistance is necessary for a State responding to and recovering from a natural disaster lies with each State. The basis for any State request for a major disaster declaration must be a finding that (1) the situation is of such severity and magnitude that an effective response is beyond the capacities of the State and affected local governments, and (2) Federal assistance under the Stafford Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensations by insurance for disaster-related losses. 44 CFR 206.36(b)(1)–(2).

The President's declaration may authorize various types of Federal assistance, falling under three main program areas: Public Assistance, Individual Assistance (IA), and Hazard Mitigation. Public Assistance provides supplemental Federal disaster grant assistance for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged, publicly owned facilities and the facilities of certain Private Non-Profit organizations. Individual Assistance provides financial or direct assistance to individuals and households who have been injured or whose property has been damaged or destroyed as a result of a Federally-declared disaster, and whose losses are not covered by insurance or other means. Additionally, a declaration authorizing Individual Assistance may authorize crisis counseling, disaster case management, disaster unemployment assistance, and disaster legal services.

[1] A major disaster is any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby. 42 U.S.C. 5122; 44 CFR 206.2(17).

The Hazard Mitigation Grant Program provides grants to States and local governments to implement long term hazard mitigation measures after a major disaster declaration. FEMA's regulations at 44 CFR part 206 Subpart B describe the process leading to a Presidential declaration of a major disaster and the actions triggered by such a declaration. 44 CFR 206.31.

1. Preliminary Damage Assessment (PDA)

An initial step in the major disaster declaration process is the preliminary damage assessment (PDA). The PDA is used to determine the impact and magnitude of damage and the resulting unmet needs of individuals, businesses, the public sector, and the community as a whole. 44 CFR 206.33. When the State official responsible for disaster operations determines that an event may be beyond the capabilities of the State and local government to respond, the State will request that the FEMA Regional Administrator perform a joint FEMA-State PDA. 44 CFR 206.33(a). A damage assessment team is formed, which is composed of at least one representative of the Federal government and one representative of the State. 44 CFR 206.33(b). A local government representative familiar with the extent and location of damage in the community is also included if possible. 44 CFR 206.33(b). Other State and Federal agencies, and voluntary relief organizations may also be asked to participate, as needed. 44 CFR 206.33(b). A FEMA official will brief team members on damage criteria, the kind of information to be collected for the particular incident, and reporting requirements. 44 CFR 206.33(b).

The length of time required to conduct a PDA varies based upon the circumstances of the event. In large disasters, a major disaster declaration may be made prior to completing a PDA, in which case a damage assessment is conducted following the declaration in order to determine additional program needs. Damage that is widespread may take considerably longer to verify than damage in a concentrated area, as there is a greater geographic area to assess. Certain types of disasters such as flooding, or disasters affecting remote or isolated areas, may slow PDAs down due to limited accessibility. Depending on the above circumstances, a PDA can take anywhere from a day or two to a week or more. On average, a PDA can be completed within a week. At the close of the PDA, FEMA consults with State officials to discuss findings and reconcile any differences. 44 CFR 206.33(c).

2. State's Submission of Its Declaration Request to FEMA

During or at the close of the PDA, the Governor of a State submits the request for a major disaster declaration through the appropriate FEMA Regional Administrator. 44 CFR 206.36. The request must be submitted within 30 days of the occurrence of the incident in order to be considered. 44 CFR 206.36(a). The basis for the request must be a finding that (1) the situation is of such severity and magnitude that an effective response is beyond the capabilities of the State and affected local governments, and (2) Federal assistance under the Stafford Act is necessary to supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses. 44 CFR 206.36(b)(1)–(2). In addition, the request must include: Confirmation that the Governor has taken appropriate action under State law and directed the execution of the State emergency plan; an estimate of the amount and severity of damages and losses stating the impact of the disaster on the public and private sectors; information describing the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster; preliminary estimates of the types and amount of supplementary Federal disaster assistance needed under the Stafford Act; and certification by the Governor that State and local government obligations and expenditures for the current disaster will comply with all applicable cost sharing requirements of the Stafford Act. 44 CFR 206.36(c)(1)–(5).

3. FEMA's Analysis and Recommendation to the President

Upon receipt of the Governor's request, the FEMA Regional Administrator provides written acknowledgement of the request. 44 CFR 206.37(a). Based on information obtained by the PDA and consultations with appropriate State and Federal officials and other interested parties, the FEMA Regional Administrator promptly prepares a summary of the PDA findings, analyzes the data, and submits a recommendation to FEMA Headquarters. 44 CFR 206.37(b). This Regional Analysis must include a discussion of State and local resources and capabilities and other assistance available to meet the major disaster-related needs. 44 CFR 206.37(b).

Based on all available information, the FEMA Administrator formulates a recommendation which is forwarded to the President with the Governor's request. 44 CFR 206.37(c). A recommendation for a major disaster declaration is based on a finding that the situation is or is not of such severity and magnitude as to be beyond the capabilities of the State and its local governments, and must include a determination of whether or not supplemental Federal assistance [2] under the Stafford Act is necessary and appropriate. 44 CFR 206.37(c)(1). In developing a recommendation, FEMA considers factors such as the amount and type of damages; the impact of damages on affected individuals, the State, and local governments; the available resources of the State and local governments, and other disaster relief organizations; the extent and type of insurance in effect to cover losses; assistance available from other Federal programs and other sources; imminent threats to public health and safety; recent disaster history in the State; hazard mitigation measures taken by the State or local governments, especially implementation of measures required as a result of previous major disaster declarations; and other factors pertinent to a given incident. 44 CFR 206.37(c)(1). When preparing its recommendation for Individual Assistance in particular, FEMA considers specific factors described in 44 CFR 206.48(b).

4. Approval or Denial of the Declaration Request

Upon completion of its recommendation, FEMA forwards it to the President along with the Governor's request. The Governor's request may result in either a Presidential declaration of a major disaster or an emergency, or denial of the Governor's request. 44 CFR 206.38(a). The Governor will be promptly notified by the FEMA Administrator of a declaration by the President that a major disaster exists, or that the Governor's request does not justify the use of the authorities of the Stafford Act. 44 CFR 206.39. A State may appeal a denial of declaration request within 30 days after the date of the letter denying the request. 44 CFR 206.46(a).

[2] The supplemental nature of Federal disaster assistance is a longstanding principle of emergency management and disaster response in this country. After any event, the local officials are the first to respond, by nature of their proximity to the event and knowledge of the area and circumstances. If additional resources are needed, the State then steps in to assist. Once those resources are overwhelmed, or it is clear that they will be overwhelmed, the Governor may request a major disaster declaration. 44 CFR 206.36(a). In the event of a declaration, State and local officials continue to lead their respective response and recovery missions, with Federal support provided under the Stafford Act.

5. Types of Assistance Approved Under the Declaration Request

A major disaster declaration will include the types of assistance that are authorized under the declaration, 44 CFR 206.40(a), although other types may be authorized later, 44 CFR 206.40(c). The types of assistance authorized under the declaration are based upon whether the damage involved and its effects are of such severity and magnitude as to be beyond the response capabilities of the State, the affected local governments, and other potential recipients of supplementary Federal assistance. 44 CFR 206.40(a). A major disaster declaration may authorize all, or only particular types of, supplementary Federal assistance requested by the Governor. 44 CFR 206.40(a). As noted above, when evaluating requests for Individual Assistance, FEMA considers the factors under 44 CFR 206.48(b) to determine whether supplemental Federal Individual Assistance is warranted.

A major disaster declaration authorizing Individual Assistance may include any or all of the following programs:

Individuals and Households Program: The Individuals and Households Program (IHP) provides grants, direct assistance, or both to eligible disaster survivors who have necessary expenses and serious needs that they are unable to meet through other means, such as insurance. 44 CFR 206.110–120. This help may be in the form of housing assistance (including Temporary Housing, Repair, Replacement, and Semi-Permanent or Permanent Housing Construction) as well as assistance to meet ''other needs'' such as medical, dental, child care, funeral, personal property, and transportation costs.

Crisis Counseling Program: The Crisis Counseling Program (CCP) assists individuals and communities recovering from the effects of a natural or human caused disaster through the provision of community based outreach and psycho-educational services. 44 CFR 206.171. Supplemental Federal funding for crisis counseling is available to the State through two grant mechanism: (1) Immediate Services Program, which provides funds for up to 60 days of services immediately following a disaster declaration; and (2) the Regular Services Program, which provides funds for up to nine months following a disaster declaration.

Disaster Case Management Program: The Disaster Case Management Program (DCMP) is a program that involves a partnership between a disaster case manager and a survivor to develop and carry out a Disaster Recovery Plan. 42 U.S.C. 5189d. The process involves an assessment of the survivor's verified disaster caused unmet needs, development of a goal oriented plan that outlines the steps necessary to achieve recovery, organization and coordination of information on available resources that match the disaster caused unmet need, monitoring of progress towards the recovery plan goals and, when necessary, client advocacy.

Disaster Legal Services: Disaster Legal Services provides legal assistance to low income individuals who, prior to or as a result of the disaster, are unable to secure legal services adequate to meet their disaster related needs. 44 CFR 206.164. FEMA, through an agreement with the Young Lawyers Division of the American Bar Association, provides free legal help for disaster survivors.

Disaster Unemployment Assistance: Disaster Unemployment Assistance (DUA) provides unemployment benefits and re-employment services to individuals who have become unemployed as a result of a major disaster and who are not eligible for regular State unemployment insurance. 44 CFR 206.141.

B. Sandy Recovery Improvement Act of 2013

On January 29, 2013, the President signed the Sandy Recovery Improvement Act of 2013 (SRIA) into law (Pub. L. 113–2). Section 1109 of SRIA requires FEMA, in cooperation with State, local, and Tribal emergency management agencies, to review, update, and revise through rulemaking the factors found at 44 CFR 206.48 that FEMA uses to determine whether to recommend provision of Individual Assistance during a major disaster. These factors help FEMA measure the severity, magnitude, and impact of a disaster.

Congress directed FEMA to review, update, and revise these factors, including 44 CFR 206.48(b)(2) related to trauma and the specific conditions or losses that contribute to trauma, to provide more objective criteria for evaluating the need for assistance to individuals, to clarify the threshold for eligibility, and to speed a declaration of a major disaster or emergency [3] under the Stafford Act. Pursuant to SRIA, this rulemaking must be completed by January 29, 2014. Although the necessary process to revise the factors is not yet complete, FEMA intends to complete this process as expeditiously as possible.

SRIA also authorized, among other things, the option for Federally recognized Indian Tribal governments to make a request directly to the President for a Federal emergency or major disaster declaration. FEMA will implement this provision of SRIA in a separate rulemaking.

C. FEMA's Outreach Efforts Required by the Sandy Recovery Improvement Act

Section 1109 of SRIA requires FEMA to cooperate with State, local, and Tribal emergency management agencies during the process of reviewing, updating, and revising the factors found at 44 CFR 206.48(b). FEMA conducted outreach with stakeholders, including meetings with the National Emergency Managers Association, the International Association of Emergency Managers, the National Advisory Council, FEMA regional offices, and Tribal governments (hereinafter ''stakeholder group''). The stakeholder group had widespread participation from individuals involved in emergency management at the State, local, and tribal levels. These outreach efforts were conducted from February 2013 through May 2013 and consisted of in-person conferences and conference calls. During this outreach, a series of themes emerged from the members of the stakeholder group which are discussed below.

1. The Role of Voluntary, Faith, and Community Based Organizations During Disasters

Many in the stakeholder group felt that the consideration of services and benefits provided by voluntary, faith-based, and community-based organizations during a disaster should not continue to serve as an indicator for when supplemental Federal assistance is warranted. The stakeholders felt that voluntary, faith-based, and community-based organization involvement may not be available at the time of a disaster declaration and those organizations do

[3] The factors that FEMA considers to evaluate the need for assistance to individuals under the Stafford Act are at 44 CFR 206.48. FEMA uses these factors to evaluate a governor's request for a declaration of a major disaster, not an emergency. SRIA Section 1109 states that FEMA must review, update, and revise the factors in 44 CFR 206.48(b). The factors that FEMA uses to evaluate a governor's request for emergency assistance, however, are not provided in 44 CFR 206.48(b) or in FEMA's regulations. Therefore, the scope of this rulemaking will apply only to Individual Assistance factors that FEMA considers when evaluating a Governor's request for a major disaster declaration. Section 502 of the Stafford Act authorizes FEMA to provide IHP assistance as part of an emergency declaration. FEMA has previously considered some of the factors found at 206.48(b) when considering an emergency declaration request that includes IHP assistance. FEMA will continue to consider some of the factors, when applicable, at 44 CFR 206.48(b) when evaluating an emergency declaration request that includes IHP assistance.

not provide funding for the rebuilding or replacement of houses. FEMA currently considers, as an Individual Assistance factor, the extent to which voluntary agencies and State or local programs can meet the needs of disaster survivors. 44 CFR 206.48(b)(4). Voluntary, faith-based, and community-based organizations are often among the first to respond to an event. Following a disaster, voluntary, faith-based, and community-based organizations mobilize to provide immediate assistance such as food, clothing, shelter, cleaning supplies, comfort kits, first aid, and medical care, as well as services including coordinating donations, counseling, home repairs, and rebuilding. FEMA is proposing to continue consideration of the resources made available by such organizations as part of the new ''Resource Availability'' factor discussed below. FEMA recognizes that the resources provided by the voluntary, faith-based, and community-based organizations are typically not a long term recovery solution for a disaster affected community and that these organizations' financial capabilities are mostly donor-based and dependent on the economic climate. FEMA also believes that information on voluntary, faith-based, and community-based organizations is valuable because it can enhance the picture of disaster needs at a local, grass roots level and may either offset the need for, or reveal a need for, supplemental Federal assistance.

2. The Correlation Between the Population Size of a State and Its Capability To Recover

Several members of the stakeholder group discouraged FEMA from making a correlation between State population size and the capability of that State to recover. More specifically, multiple members of the stakeholder group expressed concern with the table in the current regulations which provides the average amount of Individual Assistance by State. *See* 206.48(b)(6). This table of averages does not set a threshold for recommending Individual Assistance, but was intended as guidance to States and voluntary agencies as they develop plans and programs to meet the needs of disaster survivors. 44 CFR 206.48(b)(6).

In developing this proposed rule, FEMA evaluated the utility of this table. FEMA determined that the table should be removed because it causes confusion among States, and may be viewed incorrectly as a threshold for whether a State should request Individual Assistance. In addition, the table is based on 1990 Census data, uses assistance information from 1994–1999, and is based on the previous iteration of the IHP which consisted of two separate programs: (1) The Temporary Housing Assistance Program and (2) the Individual and Family Grant Program. FEMA recognizes that there are many factors, including population, that contribute to a State's capability to respond to and recover from a disaster. FEMA is proposing several factors, discussed below, that will be used in evaluating State capability.

3. Issues With Widespread Damage and Contiguous States

Current 44 CFR 206.48(b)(1) notes that high concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State. Stakeholders were concerned that the cost of widespread minimal damage across counties within a State may not be appropriately considered within the concentration of damage factor. The stakeholders wanted greater consideration to widespread events that are costly. FEMA recognizes that as a practical matter, widespread minimal damage spread across a larger geographic area, can overwhelm a State's capability to adequately respond to a disaster. Therefore, FEMA is proposing a factor, discussed below, that will evaluate the estimated cost of assistance for a State.

In events where disasters cross state lines, several emergency managers recommended that a major disaster declaration in one of the States should automatically trigger a major disaster declaration in the other affected State or States. The Stafford Act requires that a Governor's request for a major disaster declaration is based on a finding that the disaster is of such severity and magnitude to be beyond the capabilities of the State and affected local governments. 42 U.S.C. 5170(a). FEMA's major disaster recommendation to the President is based on this same finding. 44 CFR 206.37(c). Each State has different capabilities to respond to, recover from, and mitigate the effects of a disaster. Moreover a disaster that crosses state lines may have differing impacts in the affected states. As such, it is unlikely that every event that impacts multiple states will necessarily be beyond each affected State's respective capabilities. Therefore, rather than recommending that the President automatically declare a disaster for each adjoining State affected by a disaster, FEMA proposes to continue to base its major disaster declaration recommendation on the capability of the affected State and local governments to respond to the event, in accordance with the requirements for a major disaster declaration in the Stafford Act.

4. Impact on Businesses

Multiple members of the stakeholder group asked FEMA to consider the impact of an incident on businesses. They believe that there is a direct correlation between impacts on businesses and a community's ability to recovery. As discussed below, FEMA is proposing revised IA factors that consider the impact to businesses because the impacts of a disaster on businesses may impede a community's ability to recover. Business losses alone, however, will not result in a Presidential major disaster declaration that authorizes IA because the IA grant programs do not provide assistance to businesses. Instead, FEMA considers the effect that business disruptions have on disaster survivors. For example, some survivors may lose work or become unemployed due to a disaster, and may otherwise be ineligible for standard unemployment insurance benefits, thus showing an increased need for DUA.

In addition, the Small Business Administration (SBA) has separate statutory authority and programs, which may be available to assist businesses absent a Presidential major disaster declaration.

5. Decoupling Individual Assistance Programs

Several members of the stakeholder group suggested decoupling IA programs so that States can request specific IA programs instead of receiving a generic major disaster declaration that authorizes all IA programs. The manner in which IA programs are requested and authorized is outside the scope of this proposed rulemaking, which is to revise the factors which FEMA uses to evaluate the need for IA. However, current FEMA policy and practice already allows States to request all IA programs or specific IA programs, as appropriate, via its standardized form, Request for Presidential Disaster Declaration Major Disaster or Emergency, OMB Control Number 1660–0009. This form allows States to ''check off'' the IA programs they are requesting.

Indeed, there have been recent major disaster declarations, which authorized Disaster Unemployment Assistance and the Crisis Counseling Program, without the other IA programs.[4] These programs

[4] For example South Dakota, DR–4155, Severe Winter Storm, Snowstorm, and Flooding, Declared November 8, 2013 (DUA and CCP), 78 FR 72093; Colorado, DR–4134, Black Forest Wildfire, Declared July 26, 2013 (DUA and CCP), 78 FR 51204;

meet specific needs in the disaster-impacted community that may be unrelated to physical disaster damage. FEMA may consider recommending authorization of these programs when they are needed, even in the absence of authorization of the Individuals and Households Program, which is generally directly tied to physical disaster damage.

6. Impacts to Community

FEMA received comments from the stakeholder group suggesting that FEMA assess the impacts from a disaster to a community as a whole and not just consider the damage that occurred to individual houses and residences to determine the need for a major disaster declaration that authorizes IA and the specific IA programs required. FEMA is considering implementing this recommendation in the proposed factor described below entitled, ''Impact to Community Infrastructure.'' FEMA believes that by reporting and examining community impacts instead of just individual residence impacts, FEMA and the State will have a better understanding of the overall impact of the disaster on the lives of individuals in the community and which IA programs would benefit disaster survivors. As discussed in more detail below, significant disruptions to important services such as transportation, schools, child care, eldercare, or police services are likely to impede recovery of that community and may be indicative of a heightened need for Federal assistance. In addition, such impacts may show a specific need for certain IA programs. For example, a community may have relatively low damage impacts to individual residences but a large amount of the community's infrastructure, such as schools or roads, may have been destroyed. Such impacts can be quite traumatic to the community and may suggest a need for specific IA programs such as the Crisis Counseling Program, but not necessarily the Individuals and Households Program. This information will assist FEMA in determining which IA programs to approve when granting a major disaster declaration.

7. Linking Individual Assistance Declarations With Public Assistance Estimated Cost Factor

Some members of the stakeholder group suggested aligning the financial indicators for IA and Public Assistance major disaster declarations. Currently, FEMA uses the following factors to evaluate the need for a Public Assistance major disaster declaration: Estimated cost of assistance, localized impacts, insurance coverage, hazard mitigation, recent multiple disasters, and programs of other Federal assistance. These factors are focused almost entirely on the impact of the event on State, local, and tribal governments, as well as certain private non-profit organizations. Members of the stakeholder group specifically identified the estimated cost of assistance factor as an approach that could be applied to IA. Under this factor, FEMA evaluates the estimated cost of Federal and non-federal public assistance against the statewide population to give a measure of the per capita impact within the State. 44 CFR 206.48(a)(1). That factor also establishes a $1 million threshold, based on the proposition that even the smallest population States have the capability to cover that level of public assistance infrastructure damage. Under FEMA's current regulations, there is no corresponding IA single indicator designed to evaluate the total cost of the disaster against the capability of a requesting State.

FEMA agrees with the comments received from emergency managers that the fiscal capacity of a State should be considered, but FEMA does not agree that the Public Assistance per capita indicator measure should be adopted for this purpose. Instead, as discussed below, FEMA proposes to use Total Taxable Resources and Gross Domestic Product by State as indicators of a State's fiscal capacity. For reasons discussed below, FEMA believes that these indicators, calculated by the U.S. Department of Treasury and the U.S. Commerce Department's Bureau of Economic Analysis (BEA), are more appropriate for the purposes of evaluating a State's fiscal capacity and its capability to meet the needs of individuals after an event. In addition to Total Taxable Resources and Gross Domestic Product by State, FEMA will consider the estimated cost of assistance and States would also have the ability to submit other information relevant to their fiscal capacity. FEMA's proposal of a fiscal capacity factor is discussed further below.

8. Thresholds

Some members of the stakeholder group indicated that they would like a specific ''hard'' threshold that indicates whether a State would be eligible to receive a major disaster declaration authorizing IA. The stakeholders felt that if there was an established threshold it would give States a clear idea of what level of damage and need the State must have before requesting assistance. The stakeholders believed that this would prevent States from spending the time compiling the data and requesting a declaration when they have not sustained enough damage to qualify for a major disaster declaration that authorizes IA.

Section 320 of the Stafford Act prohibits the denial of assistance to a geographic area based solely use of an arithmetic formula or a sliding scale based on income or population. 42 U.S.C. 5163. Although FEMA determined that any hard thresholds or inflexible formula would offend the principles of Section 320,[5] FEMA believes that a systematic and objective approach using standardized factors is important for making informed and consistent recommendations to the President as well as enhancing predictability for a State when they request IA. As discussed throughout section IV, FEMA is proposing to use objective data from other Federal agencies to inform the overall assessment of the request, but, in keeping with the principles of Section 320 and recognizing that every disaster presents unique circumstances, this data alone will not be independently dispositive of whether FEMA recommends the need for IA.

9. Insurance

Under its current regulations, FEMA considers the amount of insurance coverage when evaluating the need for IA. 44 CFR 206.48(b)(5). FEMA received comments from the stakeholder group that said that this insurance coverage factor could be viewed as a penalty for people that have limited insurance or insurance that does not cover the specific disaster damage. FEMA does not agree that the insurance coverage factor penalizes disaster survivors for maintaining private homeowner's insurance or flood insurance. FEMA's programs are not loss indemnification programs. They do not ensure that an applicant is returned to their pre-disaster living condition nor can they cover all disaster-related losses. FEMA assistance is not as comprehensive as insurance coverage and the amount of money that an insurance company will

Colorado, DR–4133, Royal Gorge Wildfire, Declared July 26, 2013 (DUA only), 78 FR 51204.

[5] As noted above, FEMA applies a $1 million minimum threshold when evaluating requests for Public Assistance. This is based upon a determination that even the smallest states can be expected to cover that level of damage and that disaster assistance is intended to be supplemental in nature. The minimum threshold is not a sliding scale or an arithmetic formula, nor is it based on population or income. Rather, it is related directly to the degree of damage only. As such, there is no conflict with section 320 of the Stafford Act.

provide as a settlement is typically greater than the dollar amount of assistance FEMA is legally permitted to provide.[6] FEMA takes insurance coverage into consideration under current 44 CFR 206.48(b)(5) because, under the Stafford Act, Federal disaster assistance cannot duplicate assistance from any source, including available insurance proceeds. When evaluating this factor, FEMA considers the type of disaster damage when determining whether there is insurance coverage. For disaster survivors with insurance that does not cover the specific disaster damage, their losses are considered uninsured.

Comments that FEMA received from the stakeholder group raised additional concern with the insurance data that FEMA uses because it can be inaccurate leading FEMA to under- or over-estimate the actual insurance penetration rates[7] within a community. FEMA currently utilizes National Flood Insurance Program (NFIP) data to determine insurance penetration rates for flood damages and Census data to determine homeowners' insurance coverage percentages. FEMA uses the percentage of owner-occupied homes with a mortgage based on Census data to determine an insurance penetration rate. FEMA assumes that a home with a mortgage would require home insurance coverage. FEMA is pursuing additional resources beyond NFIP and Census data to verify insurance penetration rates in order to have the most accurate insurance information available. FEMA is requesting that stakeholders and the public provide information and suggestions on potential sources of data for the most accurate insurance information. FEMA will consider suggestions during the development of the final rule.

10. Homes in Foreclosure

FEMA received comments from the stakeholder group related to homes in foreclosure. Some commenters stated that if an area with a high foreclosure rate is affected by a disaster, these foreclosed homes without an owner could be a greater burden to the State in the recovery process. FEMA considered this information and has preliminarily concluded that foreclosure data should not be specified in our evaluation factors. FEMA's IA programs do not provide any form of assistance for foreclosed homes. Repair assistance is available only for owner-occupied primary residences. As such, homes without an owner, or homes owned by a bank or other creditor would not be eligible for assistance. FEMA recognizes that high levels of foreclosure may be associated with economic difficulties in the affected area that could also negatively impact a community's ability to recover. However, FEMA believes other factors including poverty level, pre-disaster unemployment, and per capita personal income will be adequate indicators of economic health in most circumstances. If a State believes that homes in foreclosure will impact their capability to respond to the disaster, then the State may articulate this concern in the narrative portion of their declaration request. FEMA considers all relevant information provided in a State's request. 44 CFR 206.48.

11. Incentives for State Sponsored IA Programs

FEMA received comments from the stakeholder group stating that FEMA should provide incentives for States to have their own IA programs. Commenters stated that currently there is no consideration by FEMA of the disasters that are paid for by States and that States should not be penalized for having a program that assists its citizens during the time it takes for PDAs to be completed and a major disaster declaration authorized. FEMA agrees with the comments received from emergency managers that any efforts or programs to help citizens by a State should be considered. As discussed below in the ''Planning After Prior Disasters'' factor, FEMA proposes to include consideration of any planning and disaster relief programs a State establishes after a prior disaster because States are ultimately responsible for the well-being of their citizens and therefore should continuously evaluate and improve their disaster planning and relief programs based on lessons learned from previous disasters.

IV. Discussion of the Proposed Rule

This rule proposes to implement Section 1109 of SRIA, which requires FEMA to revise and update through rulemaking the Individual Assistance factors that are used to make a major disaster recommendation to the President. States are not required to provide information on every single factor listed below; the amount of information and data provided by each State is voluntary. However, the failure of a State to provide sufficient evidence that supplemental Federal assistance is necessary may result in a delay or possibly denial of a request for a major disaster declaration authorizing IA.

As is currently the practice, FEMA will continue to use a myriad of factors and data to formulate its recommendations to the President on major disaster declarations that authorize IA. No single data point or factor would determine on its own FEMA's ultimate recommendation nor would any single factor necessarily affect the President's ultimate determination of whether a major disaster declaration authorizing IA is warranted. The proposed factors would not limit the President's discretion regarding major disaster declarations. FEMA reviewed the current factors and proposes to revise the current factors as follows.

A. 44 CFR 206.48—Paragraph (b)(1) State Fiscal Capacity and Resource Availability

FEMA is proposing to add at 44 CFR 206.48(b)(1) a factor entitled ''State Fiscal Capacity and Resource Availability.'' The factors discussed below will be used by FEMA to evaluate a State's fiscal capacity to respond to a disaster as well as a State's available resources that can or have been committed to the disaster recovery process.

Fiscal Capacity. FEMA is proposing to evaluate a State's fiscal capacity to respond to and recover from a disaster in 44 CFR 206.48(b)(1)(i)(A)-(D). As discussed above, major disaster declarations are based upon a finding that the event is of such severity and magnitude that an effective response is beyond the capabilities of the State and affected local governments. Economic conditions of the State and affected local governments are clearly relevant to such a finding. However, the current regulations do not specifically include consideration of economic factors that could affect a State's capability to respond to or recover from a disaster. The proposed data points will help FEMA evaluate through independently calculated data whether a State is financially overwhelmed and unable to adequately respond to a disaster.

In addition, the United States Government Accountability Office (GAO) has suggested in multiple reports[8] that FEMA should incorporate

[6] For disasters occurring in Fiscal Year 2016 the maximum amount of financial assistance provided to an individual or household under section 408 of the Stafford Act (IHP) with respect to any single emergency or major disaster is $33,000. *See* 80 FR 62086, Oct. 15, 2015. This amount is adjusted annually based on the Consumer Price Index for All Urban Consumers as calculated by the Department of Labor, Bureau of Labor Statistics.

[7] Insurance coverage rates and insurance penetration rates are both currently captured in 44 CFR 206.48(b)(5). In the new proposed regulation, both of these insurance rates will be captured at 206.48(b)(2)(vi).

[8] United States Government Accountability Office, FEDERAL DISASTER ASSISTANCE:

States' fiscal capacity into its considerations for recommendations on disaster declarations to the President. The GAO reports have historically focused on fiscal capacity in FEMA's Public Assistance (PA) factor criteria, but changes to the PA criteria are outside the scope of this proposed rule. FEMA believes that the same principle applies to IA and PA, in that there is a need to assess a State's capacity to respond and recover from a disaster on its own when determining whether a major disaster declaration is warranted because Federal assistance is supplemental. Each State's capacity to respond and recover varies based on the circumstances of the disaster and the State's resources.

FEMA therefore proposes to include in 44 CFR 206.48(b)(1)(i)(A)–(C) the following three factors which will help evaluate a State and local jurisdiction's fiscal capacity: (A) The Total Taxable Resources (TTR) of the State,[9] (B) the Gross Domestic Product (GDP) by State,[10] (C) and the Per Capita Personal Income by Local Area. FEMA anticipates that these data points are readily available so that the State can discuss the data points in their request for a major disaster declaration. These publicly available data points, calculated by third-party government agencies, will allow FEMA to use standardized data to evaluate the economic capability of a State to effectively respond to an event.

The TTR of the State is an annual estimate of the relative fiscal capacity of a State, calculated by the U.S. Department of Treasury. TTR is defined as the unduplicated sum of the income flows produced within a State and the income flows, received by its residents, which a State could potentially tax. Calculation of the TTR is based on the GDP by State and additional accounting for resident earnings (wages, salaries, proprietor's income, etc.) from out-of-state, and resident dividend and interest income, as well as reduction for components that are presumed not taxable by States (employee and employer contributions to social insurance, federal indirect business taxes, federal civilian enterprises surplus/deficit). While TTR does not consider the actual fiscal choices made by the States, it does reflect their potential resources. Increases or decreases in TTR could indicate a strengthening or declining State economy for FEMA to consider when making a determination of the State's capacity. In summary, TTR is a flow concept, a comprehensive measure of all the income flows a State can potentially tax. TTR data is updated annually with a two year lag in the data.

The GDP by State is calculated by the BEA.[11] GDP by State estimates are measured as the sum of the distributions by industry and state of the components of gross domestic income which is the sum of the costs incurred and incomes earned in the production of GDP. Currently, TTR is only provided for the fifty States and the District of Columbia,[12] but not the territories; but GDP by State includes calculations for U.S. territories.[13] FEMA would use GDP by State primarily as an alternative fiscal capacity measure when the TTR of an area is unavailable. GDP by State may also be used by a State when their TTR is inaccurate due to the two year lag in TTR data. It is possible that a State's TTR data could be strong or trending upwards when in fact recent events may have caused a significant drop in the State fiscal capacity that is not yet reflected. This significant drop could be caused by, for instance, a previous disaster or a financial downturn. Additionally, if a disaster had a significant amount of damages and impacts, so much so that it could have a major impact on the real or actual TTR, FEMA would likely recommend granting IA, assuming the damages were not covered by home, property, or flood insurance and IA assistance would not duplicate benefits. TTR is one data point along with numerous others and will not on its own determine FEMA's recommendation. States also have the opportunity, as they have in the past, to tell FEMA how their economy is impacted by the disaster and previous disasters. The State may also present, and FEMA will evaluate, the GDP trend in addition to simply the TTR data.

Generally, FEMA assumes a State with a low TTR may have a lower threshold for requiring supplemental Federal assistance than a State with a higher TTR because its economy may not be as resilient against the increased financial burdens that are attributed to a large disaster. FEMA assumes territories with lower GDP may have a relatively lower threshold for requiring Federal assistance. While a higher TTR or GDP are indicative of greater fiscal capability, FEMA recognizes that there are disasters that are so large or so destructive as to overwhelm even the most fiscally capable States.

Per capita personal income by local area is calculated by the BEA,[14] and is the personal income of the residents of a given area divided by the resident population of the area. BEA uses the Census Bureau's annual midyear population estimates when computing the per capita personal income. FEMA anticipates using per capita personal income by local area as a measure to better assess the need for supplemental Federal assistance within each local area. A local area with a relatively low per capita personal income that is affected by a disaster may have a lower threshold for requiring supplemental Federal assistance. Local governments in areas with low per capita personal income will typically have lower tax bases and therefore may have fewer resources available to help local residents impacted by a disaster, which may indicate a lower threshold for requiring supplemental Federal assistance. Per capita personal income by local area when considered holistically with TTR (and when

Improved Criteria Needed to Assess a Jurisdiction's Capability to Respond and Recover on Its Own, GAO–12–838, September 2012. Available at: *http://www.gao.gov/assets/650/648162.pdf.* United States Government Accountability Office, DISASTER ASSISTANCE: Improvement Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures, August 2001. Available at: *http://www.gao.gov/assets/240/232622.pdf.*

[9] For a more detailed discussion of the methodology estimating the total taxable resources (TTR) of the State, please refer to Dep't of the Treasury, Treasury Methodology for Estimating Total Taxable Resources (TTR) (last revised Nov. 2002), *http://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf.* This document is also available in the docket for this rulemaking. The data on TTR by State is available at *http://www.treasury.gov/resource-center/economic-policy/taxable-resources/Pages/Total-Taxable-Resources.aspx.* FEMA provides this Web site for reference purposes, the Web site may change based on U.S. Treasury's future actions, and FEMA will adjust its use of the Web page and data as necessary.

[10] Gross Domestic Product of the State was formerly referred to as Gross State Product. For a more detailed discussion of the methodology estimating the Gross Domestic Product of the State, please refer to *http://bea.gov/regional/pdf/gsp/GDPState.pdf.* This document is also available in the docket for this rulemaking. An example of GDP by State is available at *http://www.bea.gov/newsreleases/regional/gdp_state/gsp_newsrelease.htm;* however, FEMA will use updated data as new information is published.

[11] GDP by State is a component of the TTR calculation.

[12] The District of Columbia's TTR does not include income earned by out-of-state commuters. Since the District of Columbia is proscribed by Federal law from taxing the earnings of commuters from outside its borders, the U.S. Treasury has subtracted the earnings of non-residents (commuter income).

[13] GDP by State data is currently available from the BEA for the following territories: Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The U.S. Census publishes GDP for Puerto Rico.

[14] Data on per capita personal income is available on the BEA's ''Local Areas Personal Income & Employment'' Table CA1. FEMA may need to update this source if the BEA provides a new table for per capita personal income, and it is provided here for clarification purposes only.

appropriate GDP by State) will help to identify areas of concentrated need at the micro local area and individual level in addition to the macro State level.

FEMA also proposes to include at 44 CFR 206.48(b)(1)(i)(D) a factor entitled ''Other Factors.'' ''Other Factors'' is included to explicitly prompt the State to raise and discuss any other additional factors related to the State's fiscal capacity, *i.e.,* burdens on a State treasury or a State's inability to collect funds. This factor will encourage a State to provide an explanation of a State's fiscal capacity that might not be captured or accurately reflected in the above factors. A State may have an extraordinary fiscal circumstance that is not reflected in the above factors and FEMA encourages the State to discuss the circumstances. For example, a hurricane may cause extensive damage in a coastal area and negatively impact tourism, which in turn, will have a negative impact on the tax base and fiscal capacity.

Resource Availability. FEMA proposes to include at 44 CFR 206.48(b)(1)(ii) a factor entitled ''Resource Availability.'' Federal disaster assistance is supplemental in nature. FEMA's current regulations do not provide for the level of granularity and detail for FEMA to fully evaluate what and where the resource shortfalls are for a community and State that was affected by a disaster. ''Resource Availability'' will be an evaluation of the disaster assistance resources available from State, Tribal, and local governments as well as non-governmental organizations and the private sector so that FEMA can determine where, if any, gaps in resources exist. This factor also provides for consideration of those circumstances that may prevent a State from having sufficient resources to devote to the disaster recovery process. Supplemental Federal assistance under the Stafford Act is not warranted or necessary if a State's disaster-caused needs can be met by the available resources provided by a State, Tribal, local governments, non-governmental organizations, or the private sector.

FEMA is proposing to include at 44 CFR 206.48(b)(1)(ii)(A)–(D) four factors that will enable FEMA to fully evaluate a State's available resources post disaster: (1) State, Tribal, and local government, Non-Governmental Organizations (NGO), and Private Sector Activity; (2) Cumulative Effect of Recent Disasters; (3) State Services; and (4) Planning After Prior Disasters.

In current regulations, FEMA evaluates voluntary agency assistance to determine the need for assistance to individuals under the Stafford Act. 44 CFR 206.48(b)(4). While the current factor's title is ''Voluntary agency assistance,'' both State and local government programs are included. FEMA is clarifying the inclusion of State and local government programs and is also expanding 44 CFR 206.48(b)(1)(ii)(A) to include private sector assistance. FEMA is also specifying Tribal government assistance, which was previously considered under local government programs. FEMA is proposing this as a factor because the level of assistance available to disaster survivors from State, Tribal, and local government, NGOs, and the private sector, may offset a need or reveal an increased need for supplemental assistance. Assistance provided by State, Tribal, and local government, NGOs, and the private sector can include but is not limited to Emergency Management Assistance Compact (EMAC) resources, sheltering, housing programs, feeding, mental health services, child care, elder care, reunification services, clean up kits, blankets and cots, financial assistance, and other donations.

This factor is an attempt to include the ''Whole Community'' approach to emergency management that reinforces the fact that FEMA is only one part of our nation's emergency management team; that FEMA must evaluate all of the resources of the collective team in preparing for, protecting against, responding to, recovering from and mitigating against all hazards; and that collectively we must meet the needs of the entire community in each of these areas. FEMA fully recognizes that a government-centric approach to emergency management is not enough to meet the challenges posed by a catastrophic incident. When the community is engaged in emergency management, it becomes empowered to identify its needs and the existing resources that may be used to address them. Collectively, we can determine the best ways to organize and strengthen community assets, capacities, and interests. This allows us, as a nation, to expand our reach and deliver services more efficiently and cost effectively to build, sustain, and improve our capability to prepare for, protect against, respond to, recover from, and mitigate all hazards. The ''Whole Community'' approach is an ongoing component of the nation's larger, coordinated effort to enhance emergency planning and strengthen the nation's overall level of preparedness.

FEMA proposes to add a new factor ''Cumulative Effect of Recent Disasters,'' at 44 CFR 206.48(b)(1)(ii)(B), to evaluate a State's disaster history, both Presidential (public and individual assistance) and gubernatorial disaster declarations, for the previous 24-month period. FEMA is particularly interested in information from a State highlighting any disasters that have occurred within the State's current budget cycle. FEMA is proposing this as a factor because multiple disasters in a 24-month period, and particularly within one State budget cycle, may significantly strain a State budget and reduce the State's capability to adequately respond to and recover from a disaster without supplemental Federal assistance. In addition, pursuant to FEMA's regulations, at 44 CFR 206.48(a)(5), in evaluating the need for assistance under the Public Assistance program, FEMA considers the disaster history of the State for the last 12-month period. FEMA is requesting 24 months of State disaster history data because it closely aligns with the length of time for IA programs. For example, IHP assistance is available for 18 months and DCMP is available for 24 months from the date of a major disaster declaration. A State with an open disaster period that is affected by another disaster might have various unique issues related to recovery and the compounded effects of two disasters within a short amount of time. Review of disaster activity occurring within the past 24 months will help to capture any ongoing disaster activity where individuals may still be receiving IHP assistance. If the length of time were limited to only 12 months, this factor might not identify that the State currently has an open major disaster declaration where individuals are potentially still receiving FEMA IA assistance. This time period will also align with most State government fiscal cycles, which are typically one or two years. An unanticipated number of disasters within a fiscal cycle may contribute to budget shortfalls that may render a State less able to respond to an event.

FEMA is proposing a new factor, ''State Services,'' at 44 CFR 206.48(b)(1)(ii)(C). Under this factor, FEMA would evaluate information regarding any circumstances that prevent a State from having the resources to provide sufficient services to its citizens. FEMA strongly believes that it is important for a State to have pre-identified funding sources or sufficient disaster relief funds or programs that can be utilized to assist its citizens after a disaster. A State requesting a major disaster declaration should address the reasons why the State does not have sufficient funds, or

why the funding sources are insufficient to meet the needs of its citizens.

Finally, under the ''Resource Availability'' factor, FEMA is proposing to consider a State's ''Planning After Prior Disasters,'' at 44 CFR 206.48(b)(1)(ii)(D). Federal disaster assistance is supplemental and is not intended to take the place of State disaster assistance programs. States are strongly encouraged to develop and continuously improve their own disaster assistance programs. For this factor, States should identify any new and existing individual assistance programs as well as any improvements to existing individual assistance programs made as a result of previous disasters. States that continually fail to address limitations or shortfalls identified by FEMA or the State after previous events will receive negative consideration under this factor. FEMA is proposing this as a factor because States are ultimately responsible for the well-being of their citizens and therefore should continuously evaluate and improve their disaster planning and relief programs based on lessons learned from previous disasters.

B. 44 CFR 206.48—Paragraph (b)(2) Uninsured Home and Personal Property Losses

Under FEMA's current regulations, FEMA evaluates the concentration of damages to individuals. 44 CFR 206.48(b)(1). FEMA also considers the amount of insurance coverage pursuant to 44 CFR 206.48(b)(5). FEMA is proposing to incorporate both of the current factors, as well as additional information collected during the PDA process, into a new factor entitled ''Uninsured Home and Personal Property Losses'' in a new 44 CFR 206.48(b)(2). As described above in section (III)(A)(1) of the Background section, FEMA and the State participate in the joint PDA process, which includes an examination of the extent of damage to individual residences. The PDA data points help to illustrate the extent of damage that a community has sustained and help FEMA estimate the probable grant assistance under the Individuals and Households Program. The proposed data points save FEMA time when evaluating a major disaster declaration request because the requested data has already been evaluated and validated by FEMA during the joint PDA process. FEMA currently collects this information via the joint PDA process and uses them when evaluating requests for major disaster declaration.[15] This proposed factor will more accurately describe the information collected and evaluated during joint PDAs.

The first proposed data point is the cause of damage in a new paragraph 44 CFR 206.48(b)(2)(i). FEMA is requesting this information in part because it is directly relates to insurance coverage. The cause of disaster damage refers to the peril that caused the disaster damage such as a tornado or wind driven rain. Insurance policies typically only cover damage resulting from a specific peril or perils. FEMA is legally prohibited from duplicating insurance proceeds when providing disaster assistance and must know the level of insurance coverage and the cause of the damage to estimate the potential amount of Federal IA available.

The second proposed data point is information on the jurisdictions impacted and the concentration of damages in a new paragraph 44 CFR 206.48(b)(2)(ii). FEMA is requesting this information because it will highlight the counties within a State that may require IA as well as whether the damages were in one concentrated area of the State or widespread. This information will be gathered during the PDA process by either the damage assessment teams or via geographic information system (GIS) data. IA is typically authorized based on county or parish jurisdictional boundaries.

The third proposed data point is the number of homes impacted and degree of damage in a new paragraph 44 CFR 206.48(b)(2)(iii). Degree of damage refers to the extent of disaster damage and its impact on the habitability of a home. FEMA is requesting this information because it illustrates how a community was affected and what types and the extent of IA that may be needed for the community. This information is typically given at both the county or parish jurisdictional level and the State wide level.

The fourth proposed data point is the estimated cost of assistance in a new paragraph 44 CFR 206.48(b)(2)(iv). The estimated cost of assistance is typically generated by the joint FEMA-State PDA and is already currently collected in FEMA's current declarations process. The estimated cost of damage will help FEMA gather information about the cost of a disaster and the potential amount of FEMA assistance that would be awarded. This data point is often determined using information obtained from the other data points outlined in this factor. This data point is important because it will capture the probable grant assistance that will be awarded for personal property in addition to grant assistance for housing.

The fifth proposed data point is information on the homeownership rate of impacted homes in a new paragraph 44 CFR 206.48(b)(2)(v). This factor is an estimated rate of the homeownership of impacted homes in the disaster-affected area. FEMA may provide assistance for real property repair or replacement to homeowners for their primary residence and rental assistance to homeowners or renters; therefore, it is important to know homeownership rates in order to estimate probable assistance.

The sixth proposed data point is information on the percentage of affected households with insurance coverage appropriate to the peril in a new paragraph 44 CFR 206.48(b)(2)(vi). FEMA is requesting this information because FEMA will consider the percentage of affected households with insurance coverage as part of the evaluation of whether the IHP is necessary and to assist in determining probable grant assistance. Insurance appropriate to the peril is, for example, if the cause of the damage is wind and the homeowner has homeowner's insurance, then the homeowner has insurance appropriate to the peril. If the homeowner has homeowner's insurance, but no flood insurance, and the cause of the damage is flooding, then the homeowner does not have insurance appropriate to the peril. If a homeowner has sufficient and appropriate insurance to the peril, Federal assistance may be limited to ONA, CCP, DCMP, or DUA programs because the Stafford Act prohibits FEMA from duplicating benefits received from any other source, including insurance proceeds. The State should attempt to provide this information through the State insurance commissioner or office and other appropriate sources. FEMA will verify the data using the best analysis methods available. FEMA currently utilizes National Flood Insurance Program (NFIP) data to determine insurance penetration rates for flood damages and Census data to determine homeowners' insurance coverage percentages. Since insurance coverage is not collected during the Census, the percentage of owner-occupied homes with a mortgage is used to determine an insurance penetration rate, due to assumption that a home with a mortgage would require home insurance coverage. FEMA is pursuing additional resources beyond NFIP and Census data to verify

[15] Preliminary Damage Assessment for Individual Assistance Operations Manual (9327.2). Available at: *http://www.fema.gov/media-library/assets/documents/29569.*

insurance penetration rates in order to have the most accurate insurance information available. As previously mentioned in Section III(C)(9), FEMA is requesting that stakeholders and the public provide information and suggestions on potential sources of data for the most accurate insurance information. FEMA will consider any suggestions during the development of the final rule.

Finally, the seventh proposed data point is any other relevant preliminary damage assessment data in a new paragraph 44 CFR 206.48(b)(2)(vii). FEMA is proposing this factor to explicitly prompt the State to discuss any other damage assessment information that was gathered during the joint FEMA-State PDA that the State believes demonstrates that an effective response is beyond the capability of the State and affected local governments and that supplemental Federal assistance for individuals is appropriate.

C. 44 CFR 206.48—Paragraph (b)(3) Disaster Impacted Population Profile

In FEMA's current regulations at 44 CFR 206.48(b)(3), FEMA considers special populations in evaluating the need for assistance to individuals under the Stafford Act. FEMA proposes to expand on this current factor, in the proposed factor ''Disaster Impacted Population Profile'' at a revised 44 CFR 206.48(b)(3). Currently, in the ''special populations'' factor FEMA considers demographic information regarding low income, elderly, or unemployed populations that are affected by a major disaster because those populations may have a greater need for assistance. 44 CFR 206.48(b)(3). FEMA also considers whether a State has any American Indian or Alaskan Native Tribal populations. 44 CFR 206.48(b)(3).

FEMA is proposing to consider additional demographic data points related to the disaster impacted community. This information will help FEMA to identify the specific issues or obstacles that a community may face in their disaster recovery. FEMA will consider the following U.S. Census and other Federal agency [16] demographic data points [17] in making a recommendation for IA under a major disaster declaration: (1) The percentage of the population for whom poverty status is determined; (2) the percentage of the population already receiving government assistance, such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits; (3) the pre-disaster unemployment rate; (4) the percentage of the population that is 65 years or older; (5) the percentage of the population 18 years or younger; (6) the percentage of the population with a disability; and (7) the percentage of the population who speak a language other than English and speak English less than ''very well.'' In addition, FEMA will continue to consider any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State's request for a major disaster declaration, even if such considerations are not be reflected in the U.S. Census Bureau data. These data points are readily available so that the State can discuss the data points in its request for a major disaster declaration.

The proposed population demographic data points are relevant to all of FEMA's IA programs and are a valuable source of information to determine if specific programs are needed after a disaster. For example, demographic information revealing a large number of low income, unemployed, or elderly populations in a disaster area could indicate a need for supplemental Federal assistance because those populations may not have a large amount of disposable income or qualify for a Small Business Administration (SBA) disaster loan. With respect to demographic information that reveals a large non-English speaking population, this will help FEMA to structure their outreach efforts to ensure that any messaging efforts are in the appropriate languages.

D. 44 CFR 206.48—Paragraph (b)(4) Impact to Community Infrastructure

In FEMA's current regulations, at 44 CFR 206.48(b), FEMA considers the degree of trauma to a State and to communities when evaluating a State's need for IA. FEMA considers conditions that might cause trauma, such as large scale disruption of normal community functions and services and emergency needs such as extended or widespread loss of power or water. 44 CFR 206.48(b)(2)(ii) and (iii). SRIA specifically identified trauma as a factor that required clarification as to the specific conditions or losses that contribute to trauma. FEMA proposes to examine what was previously identified as part of the ''trauma'' factor by identifying and evaluating several more objective factors which contribute to the level of trauma caused by a disaster.[18] The ''Impact to Community Infrastructure'' factor at a proposed new 44 CFR 206.48(b)(4) includes several considerations which relate to the level of trauma, as well as considerations that shed light on a community's ability to recover from a disaster. This factor has three components: (1) Life-Saving and Life-Sustaining Services; (2) Essential Community Services; and (3) Transportation Infrastructure and Utilities. Significant levels of damage, disruption, or destruction to any or all of these components may hinder the ability of individuals and families to make a timely recovery, be indicative of higher levels of trauma, and suggest an increased need for supplemental Federal assistance—for example Other Needs Assistance, Crisis Counseling Program, or Disaster Case Management Program. FEMA anticipates information on the three components will be provided by the State.

[16] Poverty data comes from the U.S. Census Small Area Estimate Branch, ''Poverty and Median Income Estimates for Counties.'' Supplemental Nutrition Assistance Program data is from the U.S. Census's American Community Survey (ACS) using the American FactFinder, Advanced Search, Geographies: ''All Counties within the United States,'' Topics: S2201, 5-year estimates. Supplemental Security Income data comes from ACS using the American FactFinder, Advanced Search, Geographies: ''All Counties within the United States,'' Topics: B19056, 5-year estimates. The unemployment data at the state and county level are respectively available at *http://www.bls.gov/web/laus/laumstrk.htm* and *http://www.bls.gov/lau/#cntyaa.* Data on county populations of ''65 or Older'' and ''18 or Younger'' data comes from the ACS using the American FactFinder, Advanced Search, Geographies: ''All Counties within the United States,'' Topics: DP05, 5-year estimates. Data on populations with a disability comes from the ACS, American FactFinder, Advanced Search, Geographies: ''All Counties within the United States,'' Topics: S1810, 3-year estimates. Data on ''percent of population who speaks English less than very well'' comes from the ACS, American FactFinder, Advanced Search, Geographies: ''All Counties in the United States,'' Topics: B06007, 5-year estimates. Data on American Indian and Alaska Native populations comes from the ACS, American FactFinder, Advanced Search, Geographies: ''All Counties within the United States,'' Topics: DP05, 5-year estimates. FEMA may update these sources to account for future improvement and changes in the U.S. Census, BLS, BEA, and Treasury data reporting, and the sources are provided here for example.

[17] For definitions related to demographic data points, please refer to the associated organizations Web sites. For example, refer to U.S. Census Small Area Income and Poverty Estimates definitions at *http://www.census.gov/did/www/saipe/methods/statecounty/20102012county.html* for percentage of the population for whom poverty status is determined. For a definition of the pre-disaster unemployment rate, refer to Bureau of Labor Statics at *http://www.bls.gov/bls/glossary.htm* and search for the term ''unemployment rate''. The U.S. Census glossary at *http://www.census.gov/glossary* and American Community Survey also provide definitions related to demographic data points including the following terms: Assistance and Subsidies, Age, Disability, Language Spoken at Home, and Ability to Speak English.

[18] FEMA is also providing additional clarity on what constituted trauma in the Casualties factor which can be found in the proposed new 44 CFR 206.48(b)(5) and is discussed below.

FEMA is requesting information on an activity or disruption that lasts for more than 72 hours for each of the below components. As a general matter members of the public should be prepared to potentially be on their own at least 72 hours after a disaster.[19] It may take FEMA up to 72 hours to assess and mobilize Federal assets to help a State that is overwhelmed by a disaster. In addition, preparing for at least this amount of time will allow emergency responders to focus on those individuals requiring more immediate assistance.

Life-Saving and Life-Sustaining Services. FEMA is proposing that a State provide information regarding the impact of the disaster on life-saving and life-sustaining services for a period of greater than 72 hours in a new paragraph 44 CFR 206.48(b)(4)(i). FEMA is specifically seeking information on services such as, but not limited to, police, fire/EMS, hospital/medical, sewage, and water treatment services because prolonged disruption may affect the viability of a community and necessitate survivor relocation. The effects of a disaster will increase the demand for life-saving and life-sustaining services and necessitate a more robust response. Significant or extended disruptions to these services will hinder a community's ability to recover from a disaster.

Life-saving services are services that provide an essential community function that, if interrupted, will affect public health and safety in a community. Some typical examples of life-saving services data that FEMA is requesting are whether emergency medical services such as ambulances, fire services, police services, or hospital services are affected by the disaster. Life-sustaining services are services that are required to support life and well-being within a community and are necessary for the community to function as normal. Some typical examples of life-sustaining services data that FEMA is requesting are whether any community healthcare programs, assistance to homebound individuals such as Meals on Wheels, or food providers such as grocery stores or restaurants are affected by the disaster.

Essential Community Services. FEMA is proposing that a State provide information regarding the impact on essential community services for a period greater than 72 hours in a new paragraph 44 CFR 206.48(b)(4)(ii). Essential community services are services that improve the quality of life for a person in a community but do not sustain a person's life. FEMA is requesting information on the impact of the disaster on essential community services such as, but not limited to, schools, social services programs and providers, child care, and eldercare. Information on the impact of the disaster on essential community services can include, for instance, the number of schools closed, whether any social service programs or providers such as Meals on Wheels were affected by the disaster, and the number of providers of child care or eldercare in the community that closed. Significant or extended disruptions to these services will hinder the affected community's ability to recover from a disaster.

Transportation Infrastructure and Utilities. FEMA is proposing that the State provide information regarding the impact of the disaster on transportation infrastructure and utilities in a new paragraph 44 CFR 206.48(b)(4)(iii). Specifically, FEMA is seeking information on the number of roads, bridges, tunnels, and public transit closures and utility outages of water, power, sewage, and gas that last longer than 72 hours. Transportation infrastructure or utility disruptions can render housing uninhabitable or inaccessible for disaster survivors, affect the delivery of life sustaining commodities, provision of emergency services, ability to shelter in place, and efforts to rebuild. Significant or extended disruptions to this infrastructure will hinder the affected community's ability to recover from a disaster.

E. 44 CFR 206.48—Paragraph (b)(5) Casualties

In FEMA's current regulations, at 44 CFR 206.48(b)(2)(i), FEMA evaluates the degree of trauma to a State and to communities, including consideration of ''large numbers of injuries and deaths.'' As discussed above, SRIA specifically directed FEMA to clarify the factor related to trauma; the proposed changes to the Impact to Community Infrastructure factor, described above, represent part of this effort.

In addition, FEMA is proposing in a new 44 CFR 206.48(b)(5) that States submit information on the number of individuals who are missing, injured, or deceased due to a disaster. FEMA believes that this information may indicate a heightened need for supplemental Federal assistance because casualties are clearly indicative of the level of trauma in the affected area. Moreover, each of the proposed data points link to one or more types of assistance under IA programs. The estimated number of missing individuals can highlight how traumatic an event was for a community and indicate a potential need for crisis counseling. This information may also be an indicator that additional injured or deceased individuals may be discovered during the course of the disaster recovery. The estimated number of injured individuals may also indicate a need for crisis counseling as well as medical or dental assistance under the ONA provision of the Individuals and Households Program. The estimated number of deceased individuals may indicate a need for crisis counseling as well as funeral assistance under ONA. These proposed data points are typically provided by the State already.

F. 44 CFR 206.48—Paragraph (b)(6) Disaster Related Unemployment

In FEMA's current regulations, FEMA considers whether ''special populations,'' such as the unemployed, are affected by the disaster and whether they may have a greater need for assistance in 44 CFR 206.48(b)(3). As discussed above, FEMA is proposing to add a ''Disaster Impacted Population Profile'' factor, which incorporates consideration of a number of special populations, including the percentage of low-income, unemployed, and elderly individuals within the population.

In addition, FEMA is proposing a new factor, ''Disaster Related Unemployment,'' in a new paragraph 44 CFR 206.48(b)(6) that will evaluate unemployment in a different manner than FEMA's current regulations. FEMA's current regulations are focused primarily on those that are unemployed prior to the disaster. In this new factor, FEMA will seek to identify individuals that may have lost work or become unemployed as a result of the disaster.

The Disaster Unemployment Assistance program (DUA), operation of which has been delegated to the Department of Labor, 44 CFR 206.141, provides unemployment benefits and re-employment services to individuals who have become unemployed as a result of a major disaster and who are not eligible for regular State unemployment insurance. The types of workers who typically receive such assistance are self-employed, service industry workers, and seasonal workers such as those employed in tourism, fishing, or agriculture industries. In

[19] See the following Web sites as examples: The FEMA run national public service advertising (PSA) campaign Web site *http://www.ready.gov/build-a-kit*; the Texas Division of Emergency Management Web site *http://www.txdps.state.tx.us/dem/Preparedness/emerSupplyKits.htm*; the San Francisco Department of Emergency Management Web site *http://www.sf72.org/home*; and the New York City Office of Emergency Management Web site *http://www.nyc.gov/html/oem/html/get_prepared/supplies.shtml*.

order to fully evaluate whether or not DUA is appropriate, FEMA is requesting that a State provide information on the estimated number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance.

In addition, FEMA is requesting that a State provide information regarding any major employers that are affected in the area by the disaster because it may highlight an additional need for the community in their recovery efforts. When a major employer in a community is affected by a disaster, it can signal to FEMA that the community will have a prolonged recovery because a large amount of individuals may be out of work and unable to support their own recovery efforts. This may further indicate need for DUA and other IA programs. FEMA anticipates that the State will provide this information.

G. Principal Factors for Evaluating the Need for the Individuals and Households Program

FEMA is proposing that the principal factors it will consider in evaluation of any major disaster declaration request for IHP will be the fiscal capacity of the requesting State (44 CFR 206.48(b)(1)(i)) and the uninsured home and personal property losses (44 CFR 206.46(b)(2)). As discussed above, major disaster declarations are based upon a finding that the event is of such severity and magnitude that effective response and recovery is beyond the capabilities of the State and affected local governments. IHP provides grants and direct assistance to eligible disaster survivors who have necessary and serious needs that they are unable to meet through other means. In order to determine the need for IHP, it is important to evaluate the total estimated need for such assistance resulting from the event and to compare that estimated need to the fiscal capability of the requesting State.

FEMA evaluated major disaster declaration requests including IHP between January 2008 and July 2013 and determined that the uninsured home and personal property losses' estimated cost of assistance was an important factor driving whether a major disaster declaration authorizing IHP was declared by the President. FEMA found that 97% of requests involving estimated costs of assistance that were equal to or greater than $7.5 million were granted major disaster declarations authorizing IHP, while only 6% of requests involving estimated costs of assistance equal to or less than $1.5 million were granted. Requests falling between those numbers were much more uncertain, with approximately 44% granted, as reflected in Table 1.

TABLE 1—ESTIMATED COST OF ASSISTANCE TO DECLARATION DECISION COMPARATIVE

Dollar amount of estimated costs of assistance	Number of disaster requests	Number of disasters declared	Percentage of disasters declared
$7.5 million or more	32	31	97
$1.5 million to $7.5 million	87	38	44
$1.5 million or less	34	2	6

* Based on major disaster declaration requests including IHP between January 2008 and July 2013.

Similarly, FEMA found that the ratio of IA Cost to Capacity (ICC),[20] which is the estimated cost of IA divided by the State's TTR in millions, was particularly indicative of the declaration result above and below certain levels. FEMA conducted a review of 153 [21] major disaster declaration requests that included IA that were submitted between January 2008 to July 2013 to determine if there would be any impact from using TTR in assessing a State's need for a major disaster declaration authorizing IA. Each State request included an estimate of the costs from the damages attributed to the disaster event. FEMA retrieved the TTR per State at the time of each request. For each request, FEMA divided the estimated cost by the State TTR in millions. For example, if a State estimated $2,000,000 in IA costs and the State's TTR was $30,000,000,000, FEMA divided $30,000,000,000 by $1,000,000 to get the State's TTR in millions which is $30,000. FEMA then divided $2,000,000 by $30,000 to get the ratio of IA Cost to Capacity (ICC) of 66.7.

Based on the ICC calculation for all 153 State requests, there is a general trend that shows the greater the ICC ratio for a major disaster declaration request that included IA, especially above 25, the more likely the request would be granted. Additionally, the lower the ICC ratio for a major disaster declaration request that included IA, especially below 10, the more likely the request was denied. Major disaster declaration requests for IA with an ICC greater than 25 were granted 95% of the time, while requests with an ICC below 10 were granted only 7% of the time. Requests with ICCs falling in between 10 and 25 were granted approximately half the time.

FEMA is not proposing to use these numbers as a hard ''threshold'' or incorporate them into regulation because there is no one factor required to receive a major disaster declaration authorizing IA and we want to preserve the President and FEMA's discretion to consider the circumstances of each event. Moreover, FEMA recognizes that this kind of analysis can help identify trends and ensure consistent decisionmaking over time, but does not always provide the full scope of information necessary for FEMA to make an informed recommendation.

However, FEMA believes that providing these types of trends and historic data is important to help guide States in their consideration of whether or not an event might warrant a major disaster declaration authorizing IA. The trends and historical data will also help guide State planning with respect to what level of IHP damage they should expect to handle without supplemental Federal assistance. This type of planning guidance is consistent with the original intent behind the table currently in 44 CFR 206.48(b)(6). As discussed above, the data in that table eventually became out of date and it no longer has any utility as a planning tool.

In order to ensure that the most useful and up to date data and information are available to States for guidance and planning purposes, FEMA proposes to compile and periodically publish aggregate PDA data for major disaster requests, including IHP. Currently,

[20] See the discussion in V. Regulatory Analysis; A. Executive Order 12866; 5. Impacts to Costs, Benefits, and Transfer Payments; d. Transfer Payments, for more detailed explanation of ICC and these findings.

[21] For the analysis on TTR, FEMA excluded disaster declaration requests that did not include a request for IA. FEMA also excluded duplicate requests, U.S. territories' requests (because there is no TTR data available), requests without summaries of the PDA data or with insufficient data, and requests that involved an expedited decision.

FEMA publishes Preliminary Damage Assessment Reports [22] for every request for a major disaster declaration. These reports lay out the PDA data that was provided in the Governor's request and indicate whether or not the request resulted in a declaration. Upon finalization of new IA declaration factors, FEMA intends to continue publishing these reports with new declaration factors. In addition, FEMA intends to periodically publish the aggregate data from these reports in a format that will assist States in evaluating the likelihood of receiving a major disaster declaration for a specific event and for planning for future events. By publishing this information in periodic guidance, and not codifying it in regulation, FEMA would ensure that the data remains timely and useful.

In addition to publishing PDA data, FEMA intends to publish guidance that provides clarity to States on how FEMA would utilize the new proposed factors when it evaluates major disaster declaration requests that include IA. This guidance will provide additional detail regarding analysis of the principal factors as well as other factors identified in the proposed rule. FEMA intends to publish the guidance for public comment to this rulemaking docket, and FEMA will develop the final rule and guidance as a pair taking into consideration all comments received on the NPRM and guidance. Over time, FEMA may update this guidance as necessary. The provision of more specific details regarding evaluation of the specific factors through guidance will allow FEMA to be more nimble in adapting to changing circumstances or changing priorities, while also creating an important transparency benefit for State and local governments.

It is important to note that certain disasters may present unique circumstances which cannot be anticipated by regulation or policy guidance, as such States may submit, and FEMA may evaluate, all relevant information. In addition, FEMA only evaluates requests and makes recommendations to the President. The sole discretion to approve or deny any request for major disaster declaration request lies with the President.

V. Regulatory Analysis

A. Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

1. Executive Summary & A–4 Accounting Statement

Executive Orders 13563 and 12866 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. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

This proposed rule would impose a cost burden of $3,752 in the first year of implementation and $1,609 annually for subsequent years. During the ten year period following the final rule's effective date, the total cost would be $18,233 undiscounted. The ten year present value total cost would be $15,806 and $13,302 if discounted at three and seven percent, respectively. The small annualized cost of the proposed rule would be $1,853 at three percent and $1,894 at seven percent.[23]

Despite the newly identified factors, this proposed rule would not change the total amount of assistance available to individuals and households because much of the proposed rule codifies FEMA's evolving declarations practice since 1999. FEMA does not anticipate the two newly proposed factors would change the total amount of individual assistance as well, which is discussed in the following sections. Benefits of the proposed rule include clarifying FEMA's existing practices, reducing processing time for requests due to clarifications, and providing States with notice of the new factor information FEMA is proposing to consider as part of the IA declarations process.

A–4 Accounting Table

Category	Estimates			Units			Notes
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate	Period covered	
Benefits							
Annualized Monetized ($millions/year).	None	None	None	NA	NA	NA	Not Quantified.
Annualized Quantified	None	None	None	NA	NA	NA	Not Quantified.
Qualitative	The proposed rule more clearly identifies declaration factors FEMA considers in making its recommendation to the President on a major disaster declaration authorizing IA. It codifies many factors FEMA currently considers but are not specifically identified in 44 CFR 206.48(b). The proposed rule may also result in regulatory efficiencies due to reduced process time and effort (back and forth). In addition, the newly identified factors would provide FEMA additional information on a requesting State's fiscal capacity and resource availability.						
Costs							
Annualized Monetized	$1,894.0 $1,853.0	$0.0 $0.0	$0.0 $0.0	2013 2013	7% 3%	10 Years 10 Years.	None.

[22] These can be found on FEMA's Web site at: *https://www.fema.gov/preliminary-damage-assessment-reports.*

[23] FEMA includes estimates of discounted present value costs and annualized costs according to guidance from OMB Circular A–4. Office of Management and Budget, Published September 17, 2003. Available at: *http://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf.*

A–4 ACCOUNTING TABLE—Continued

Category	Estimates			Units			Notes
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate	Period covered	
Annualized Quantified	None	None	None	2013	N/A	10 Years.	
Qualitative	None.						
Transfers							
Federal Annualized Monetized ($millions/year).	None	None	None	NA	7%	NA	None.
Other Annualized Monetized ($millions/year).	None	None	None	NA	7%	NA	None.
Effects							
State, Local, and/or Tribal Government.	None	None	None	N/A	NA	NA	None.
Small Business	FEMA certifies under 5 U.S.C. 605(b) that this proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities.						
Wages	None.						
Growth	Not Measured.						

2. Need for Regulatory Action

FEMA is proposing this rule to provide clarity on the IA declaration factors that FEMA currently considers in support of its recommendation to the President on whether a major disaster declaration authorizing IA is warranted. The additional clarity may reduce delays in the declaration process by decreasing back and forth between States and FEMA in the declarations process. FEMA is also proposing two new factors on Fiscal Capacity and Resource Availability to provide additional context on potential disaster situations. The proposed rule would also satisfy the requirements outlined in Section 1109 of SRIA.

3. Affected Population

Requests for a Federal major disaster declaration authorizing IA must come from a State's Governor. 44 CFR 206.36(a). As such, the proposed rule affects the 56 States that are eligible to request a Presidential major disaster declaration authorizing IA. States are defined in 44 CFR 206.2(a)(22), and include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

Although Section 1110 of SRIA amended the Stafford Act to allow Federally recognized Indian Tribal governments to submit requests for emergency or major disaster declarations, SRIA charged FEMA to implement that authority separately by rulemaking. Thus such declarations would be covered by a separate process and are not included in this proposed rule. Local governments are also not affected by the proposed rule because the disaster related information local governments provide to the State is part of their current disaster response process to provide situational awareness and ascertain need for further assistance.

4. Current Baseline and Changes From Proposed Rule

The proposed rule largely codifies many considerations that FEMA has applied for several years under the ''other relevant information'' prong of the regulation but were not specifically identified in FEMA regulations. FEMA reviewed State major disaster declaration letters that requested IA for numerous disasters and found that States typically included more information and data than what is specifically identified in the current regulations at 44 CFR 206.48(b).[24] As such, costs for States would be minimally impacted by the proposed rule because States currently provide FEMA with the proposed information for major disaster declaration requests, as appropriate. A marginal analysis table evaluating each of the considerations is provided later in the preamble and a more detailed table is provided in the rulemaking docket.

In addition, as stated previously, Indian Tribal governments (requesting assistance through the State) and local governments currently provide the proposed factor information for their local area and affected residents to the State in support of a State's request and its determination on whether a request for a major disaster declaration authorizing IA is warranted. Therefore, FEMA anticipates Indian Tribal governments (requesting assistance through the State) and local governments will not incur additional costs by the proposed regulation.

FEMA is also proposing to include two new factors: Fiscal Capacity and Resource Availability. Both new factors have small burden increases associated with obtaining the additional information. FEMA considers Fiscal Capacity data solely a Federal burden increase since it intends to collect the information. Resource Availability information is considered a State burden increase since States would provide such information. However, FEMA does not anticipate either new factor to impact the number of IA declaration requests received or the amount of IA assistance provided, and therefore no impact to transfer payments.

Fiscal Capacity. FEMA recognizes that each State's capacity to respond

[24] FEMA reviewed a sample of State major disaster declaration request letters and found that each letter was unique and provided many of the data points and information that would be explicitly included under the proposed regulation. The information submitted will vary depending on the disaster, the scope of damages and the need for assistance. FEMA does not require every data point to be submitted to get a declaration. Some requests will have more data or information, while other requests will have less. For instance, in more severe events to less resilient areas, the States did not need to provide a large amount of information to get a declaration, because it was evident to FEMA and the White House that the individual assistance needs were outside the capacity of the requesting State.

and recover varies based on the circumstances of the disaster and the State's resources. FEMA intends to include the consideration of fiscal capacity data to better evaluate a State's ability to adequately respond to a disaster with or without supplemental Federal assistance. The GAO has suggested in multiple reports that FEMA should incorporate States' fiscal capacity into its considerations for recommendations on disaster declarations to the President. Though the GAO reports have focused on including fiscal capacity in FEMA's PA declaration factor criteria, FEMA believes that there is a need to assess a State's capacity to respond and recover on its own when determining whether a major disaster declaration that authorizes IA is warranted as well. Furthermore, the GAO supported the use of TTR as a measure of a State's fiscal capacity because it is a comprehensive estimate of the resources that could potentially be subject to State taxation.[25] Therefore, FEMA is proposing to include fiscal capacity as an additional factor in its determination.

To ascertain a State's fiscal capacity to respond to a major disaster, FEMA intends to review data on a State's Total Taxable Resources (TTR). The U.S. Department of Treasury calculates the TTR of the State, which is used as a measure of a State's fiscal capacity.[26] TTR is based on the GDP per State but makes adjustments for additional, potentially-taxable income flows like capital gains and commuter income. FEMA acknowledges that TTR does not capture a State's actual tax revenue or expenditures and cannot be viewed as a financial accounting of a State's budget. TTR is instead intended to measure all income flows a State can potentially tax.

Resource Availability. Relative to State services and planning after prior disasters, FEMA encourages States to continuously improve their own disaster assistance programs for their citizens. States should identify any new individual assistance programs as well as any improvements to existing individual assistance programs made as a result of previous disasters. FEMA intends to include this factor to encourage States to continuously evaluate and improve their disaster planning and relief programs based on lessons learned from previous disasters. On the other hand, States that continually fail to address limitations or shortfalls identified after previous events would be a consideration in FEMA's deliberation. Nonetheless, FEMA does not expect that the inclusion of this factor would affect the overall number of major disaster declarations authorizing IA as this factor would be considered with a number of other factors and would not, in isolation, determine whether a declaration is recommended.

5. Impacts to Costs, Benefits, and Transfer Payments

In the following section, FEMA discusses the proposed rule's quantified costs for States and the Federal government, qualitative benefits, and why there are no expected impacts to transfer payments.

a. State Costs

As stated previously, many of the factors listed in the proposed rule have previously been submitted or requested subsequent to a State request and thus are estimated to have no new costs. The two proposed additional factors that have not been typically provided or considered would impose a new cost. FEMA intends to obtain data related to fiscal capacity from publicly accessible databases and Web sites at no cost to States. Providing information on State services and planning after prior disasters would impose a new cost on States. In addition, FEMA assumes the proposed rule may have an initial implementation cost for States to familiarize themselves and understand the new factor data requirements.

If a State is unable to provide information for a particular factor or factors, FEMA would evaluate and provide a recommendation on the State's need for Federal assistance based on the information submitted and data available from other sources, as appropriate. The only required elements of a State's major disaster declaration request appear at 44 CFR 206.36. FEMA's intent, through this proposed rule, is to clearly identify the considered data points that are previously captured under the ''other relevant information'' prong of the regulation to inform the States' formulation of their request. In some scenarios, certain pieces of information identified in the proposed rule may be inapplicable or unavailable. In addition, FEMA recognizes that the circumstances of a disaster may not allow a State to collect all of the information identified within the proposed rule. States would need to provide information that supports their request for a major disaster declaration authorizing IA, but would not have to address every data point in the proposed rule to be granted the request. For example, for a catastrophe of unusual severity and magnitude such that preliminary damage assessments are not necessary to determine the requirement for Federal assistance, States may submit an abbreviated request pursuant to 44 CFR 206.36(d), which need only contain limited information required by that provision. The proposed rule is identifying factors, which FEMA would consider in its review of a major disaster declaration request that includes IA when making recommendations to the President, but ultimately the amount of data provided by the State is voluntary.

FEMA anticipates information on State services and planning after prior disasters would be addressed in a short summary in the Governor's request. FEMA program employees who work with declarations estimate that a State would spend an additional 30 minutes collecting and incorporating information on State services and planning after prior disasters into the State's declaration request. FEMA assumes this time would be used to write a paragraph or two on why the State lacks the resources to provide sufficient services to its citizens and any new or existing State individual assistance programs or improvements made to State individual assistance programs as a result of previous disasters. FEMA assumes that a State would be aware of their own service and program capabilities prior to considering whether a request for a major disaster declaration that authorizes IA is warranted. In addition, a State may build upon past requests in subsequent requests depending on whether their program efforts have been ongoing or have changed.[27] FEMA previously estimated that States spend 33 hours on average to compile, write, and submit a request for a declaration.[28] FEMA assumed the equivalent of a State Government Chief Executive, a senior

[25] United States Government Accountability Office, FEDERAL DISASTER ASSISTANCE: Improved Criteria Needed to Assess a Jurisdiction's Capability to Respond and Recover on Its Own, GAO–12–838, September 2012, Page 31. Available at: *http://www.gao.gov/assets/650/648162.pdf.*

[26] A 2012 GAO report stated that other Federal departments and agencies have used TTR data to determine a jurisdiction's fiscal capacity and the extent to which a jurisdiction should be eligible for Federal assistance; specifically the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration's block grant program and Community Mental Health Service.

[27] FEMA recognizes there may be a level of repetition in a State's request, but FEMA would prefer to ensure it has up to date information, including recent efforts from previous disasters, for the White House and FEMA to consider.

[28] FEMA has provided the supporting statement document for the information collection, OMB Control Number 1660–0009, in the public rulemaking docket. The supporting statement dated February 25, 2013 was the latest supporting statement prior to this proposed regulation.

level government official familiar with State emergency assistance programs, would prepare the Request for Presidential Disaster Declaration Major Disaster or Emergency, FEMA Form 010–0–13. Per the U.S. Department of Labor Bureau of Labor Statistics, the average hourly wage rate for a State Government Chief Executive is $54.66 which FEMA multiplied by 1.4 to account for benefits.[29] This results in a fully loaded State Government Chief Executive hourly wage rate of $76.52. Between January 2004 and December 2013, FEMA received 413 requests for a major disaster declaration that authorized IA. FEMA divided 413 by ten years to estimate that States would submit an average of 41 requests for major disaster declarations authorizing IA per year. FEMA multiplied 30 minutes (0.5 hours) by the fully loaded hourly wage rate of $76.52 and 41 submissions to get an annual cost of $1,569 ($0.5 \times \$76.52 \times 41 = \$1,568.66$).

As noted above, most of the information included in the proposed factors is information that was previously captured under the ''other relevant information'' prong of the regulation and has been considered, as appropriate, when evaluating requests for a major disaster declaration that authorized IA. However, FEMA at times has had to reach back to the State for additional information.[30] By clearly identifying information considered in the proposed rule, FEMA anticipates that such delays in the declaration process would be diminished. With the changes in the proposed rule, the regulations would improve clarity regarding potentially relevant information. States would be encouraged to include the fulsome information in the original request, which could potentially eliminate follow-up correspondence and speed up the determination of a major disaster declaration request. Although FEMA recognizes that large scale disasters may not need as much detail or data to support a major disaster declaration request due to the extent of IA damage costs; other disasters may be more difficult to determine if a need for Federal disaster assistance exists without the State providing additional information identified in the proposed rule. Thus the proposed rule provides the State with the types of requested data that informs FEMA's recommendation and ultimately, the President's determination of a State's need for a major disaster declaration that authorizes IA.

To estimate the time for States to understand changes made to the regulations, State governments would spend time reading the proposed and existing regulations. Based on a sample of FEMA employees who formerly worked for State governments, FEMA estimates States would spend 30 minutes (0.5 hours) to familiarize themselves and understand the new factor data requirements.[31] FEMA assumes the equivalent of a State Government Chief Executive, a senior level government official familiar with State emergency assistance programs, would read the existing and new regulations to understand the changes. FEMA multiples the fully loaded hourly wage rate of a State Government Chief Executive, calculated above as $76.52, by 0.5 hours and 56 States, to calculate an increased State cost of $2,143 ($76.52 $\times 0.5 \times 56 = \$2,142.56$). FEMA assumes State governments would read the regulation once in the first year it goes into effect and would subsequently refer to supplemental guidance materials, such as the Governor's request template, to complete requests.

FEMA estimates total State costs in the first year to be $3,712. FEMA estimates State costs in subsequent years to be $1,569.

b. Federal Costs

FEMA anticipates the Federal government would incur minor additional costs by the rule because, as noted above, FEMA already considers most of these factors under the ''other relevant information'' prong of the regulation when reviewing major disaster declaration requests. In addition, FEMA has already begun to change the way it collects information for major disaster declaration recommendations that did not require regulatory action.

In the past, FEMA would review pre-disaster data about a disaster location. This pre-disaster data provided FEMA information about the disaster location that helped to illustrate the population and area that was impacted by a disaster. The pre-disaster data came from Federal sources, such as the United States Census Bureau and the Bureau of Labor Statistics. Independent of the regulation, FEMA had begun a process to streamline how pre-disaster data is collected and disseminated as well as improving the efficiency and speed of the PDA process by using new technologies and processes to collect and transmit information faster.

One of the areas where FEMA would incur costs is for the retrieval of fiscal capacity data from Treasury and BEA. To estimate the additional activity time, FEMA performed a dry run retrieval and storage of the relative fiscal capacity data. To retrieve, store, and update Treasury's TTR data (including all State data in a single retrieval), FEMA estimates it would take 10 to 15 minutes, and uses the average of this range, 12.5 minutes, for the purposes of this analysis. FEMA estimates it would take the equivalent amount of time for the BEA's GDP per State data, and uses 12.5 minutes as well. FEMA estimates it would take 15 to 30 minutes to retrieve BEA per capita personal income data and uses the average of 22.5 minutes. FEMA sums these three time burdens to calculate a total burden of 47.5 minutes and divides by 60 minutes, for an estimated increase burden of 0.79 hours $\times ((12.5+12.5+22.5)/60=0.7917)$.

FEMA anticipates this data retrieval to take place once annually, and to be completed by a Federal employee in the DC area at the General Schedule 12, Step 1 level, at an hourly wage rate of $36.23.[32] FEMA multiplies this wage rate by 1.4 to account for benefits, resulting in a fully loaded wage rate of $50.72. FEMA multiplies the time per year, 0.79 hours by the fully loaded wage rate of $50.72, to get an annual Federal cost increase of $40 (0.79 x

[29] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2013 National Industry-Specific Occupational Employment and Wage Estimates, NAICS code 999200, State Government excluding schools and hospitals, and Standard Occupational Classification (SOC) code 11–1011 for Chief Executive. *http://www.bls.gov/oes/2013/may/naics4_999200.htm.*

[30] Historically, FEMA has attempted to cure some of the lack of clarity by providing States with major disaster declaration request template letters, which provided a suggested organizational structure for States to follow when making their request for a major disaster declaration.

[31] To estimate the time for States to familiarize themselves and understand the new factor data requirements, FEMA surveyed its own employees who formerly worked for State governments. Thirteen employees were identified who worked for various States, representing multiple regions, State sizes, and a range in years of service in State government and FEMA. These employees were asked to read the proposed and existing regulations and answer questions to test their understanding of the changes. The employees were also provided a copy of excerpts of this regulatory preamble if they needed further information to answer the test. About 40 percent of the employees referred back to the preamble to answer the questions. It took an average of 17 minutes to read the existing and proposed regulatory text and 11 minutes to answer the questions, including referring back to the preamble. FEMA rounded 28 minutes (11minutes +17minutes) to 30 minutes and uses 0.5 hours to calculate the costs.

[32] The General Schedule (GS) 12 (Step 1) hourly wage of $36.23 is taken from the Office of Personnel Management; 2014 General Schedule (GS) salaries & wages tables; locality pay tables (Washington-Baltimore-Northern Virginia, DC–MD–VA–WV–PA). Retrieved 7/30/14 from *http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/2014/general-schedule/.*

$50.72 = $40.07), and ten-year total Federal increase of $400.

The following table displays the ten year total costs (undiscounted, discounted at three percent, and discounted at seven percent) for the proposed rule.

TABLE 2—TOTAL COSTS OF THE PROPOSED RULE

Year	State initial review cost	State costs (providing information)	FEMA costs (retrieving data)	Undiscounted annual costs	Annual costs discounted at 3%	Annual costs discounted at 7%
1	$2,143	$1,569	$40	$3,752	$3,643	$3,507
2		1,569	40	1,609	1,517	1,405
3		1,569	40	1,609	1,472	1,313
4		1,569	40	1,609	1,430	1,227
5		1,569	40	1,609	1,388	1,147
6		1,569	40	1,609	1,348	1,072
7		1,569	40	1,609	1,308	1,002
8		1,569	40	1,609	1,270	936
9		1,569	40	1,609	1,233	875
10		1,569	40	1,609	1,197	818
Total	2,143	15,690	400	18,233	15,806	13,302

c. Benefits

Benefits of the proposed rule include clarifying FEMA's existing practices, reducing processing time for requests, and providing States with notice of the new factor information FEMA is proposing to consider as part of the IA declarations process. States have the ability to assess and determine what information supports a major declaration request. The proposed rule would identify factors considered in the IA declarations process, including many factors that FEMA previously considered under the ''other relevant information'' prong of the regulation, but are not currently specified in 44 CFR 206.48(b).

In the past, FEMA may have at times had to follow up for additional information on major disaster declaration requests to better support FEMA's recommendation on a major disaster declaration authorizing IA. This regulation would improve clarity on the factors that FEMA considers when evaluating the need for a major disaster declaration authorizing IA. FEMA expects this to lessen or possibly eliminate the need to go back to the States for additional information.[33]

The two newly identified factors would also provide additional context to a State's circumstances to help inform FEMA's recommendation. FEMA believes the inclusion of fiscal capacity would further inform and strengthen FEMA's recommendations to the President with regard to major disaster declarations that authorize IA. In addition, information considered may be available more quickly and provide a fuller context. Such measures may also be more objective compared to other perceptions of a State's capacity to respond. This would also provide notice to States of the new factor information FEMA would consider.

d. Transfer Payments

First, it is important to note that the ultimate determination regarding whether or not to grant a State's request for a major disaster declaration resides with the President. FEMA does not anticipate or intend for this proposed rule to affect the number of major disaster declarations authorizing IA granted each year. As FEMA has previously considered the majority of the proposed factors in past declaration requests for individual assistance and data used in the proposed new factors are correlated to past declaration recommendations, FEMA anticipates this proposed rule would not have an impact on transfer payments, which are payments from the Federal government to States and individuals.

FEMA intends the proposed rule to identify factors that it would use when making recommendations to the President. FEMA already considers the majority of factors described in the proposed rule during previous deliberations on whether to recommend a major disaster declaration authorizing IA to the President. The only data items that FEMA has not considered in the past are the data on (1) State services and planning after prior disasters and (2) the fiscal capacity factor.

State Services and Planning after Prior Disasters. As stated previously, FEMA does not expect that the inclusion of these data items would affect the overall number of major disaster declarations authorizing IA as this factor would be considered with a number of other factors and would not, in isolation, determine whether a declaration is recommended.

Fiscal Capacity. Although FEMA is introducing a factor for fiscal capacity, analysis conducted in preparation of this proposed rule reveals that FEMA's recommendations and major disaster declarations by the President in the past have a correlation to the fiscal capacity of the requesting State. Historically, FEMA captured an aspect of fiscal capacity when evaluating the damage caused by each disaster in relation to the population of the affected State. States with the highest TTR also tend to have the highest population. As such, major disaster declarations authorizing IA have had a correlation to the fiscal capacity of the requesting State.

FEMA conducted a review of 153 [34] major disaster declaration requests that included IA that were submitted between January 2008 to July 2013 to determine if there would be any impact from using TTR in assessing a State's need for a major disaster declaration authorizing IA. Each State request included an estimate of the costs from the damages attributed to the disaster event. FEMA retrieved the TTR per State at the time of each request. For each request, FEMA divided the estimated cost of IA by the State TTR in millions. For example, if a State estimated $2,000,000 in IA costs and the State's TTR was $30,000,000,000, FEMA

[33] In making past determinations, FEMA has not tracked the length of time or the number of written or oral correspondence with the State to retrieve additional data. Therefore FEMA cannot quantify the potential savings from the clarifications provided in the proposed regulation.

[34] For the analysis on TTR, FEMA excluded disaster declaration requests that did not include a request for IA. FEMA also excluded duplicate requests, U.S. territories' requests (because there is no TTR data available), requests without summaries of the PDA data or with insufficient data, and requests that involved an expedited decision.

divided $30,000,000,000 by $1,000,000 to get the State's TTR in millions which is $30,000. FEMA then divided $2,000,000 by $30,000 to get the ratio of ICC (IA Cost to Capacity) of 66.7.

Based on the ICC calculation for all 153 State requests, there is a general trend that shows the greater the ICC ratio for a major disaster declaration request that included IA, especially above 25, the more likely the request would be granted. Additionally, the lower the ICC ratio for a major disaster declaration request that included IA, especially below 10, the more likely the request was denied. The following table displays the total number of requests and the total granted major disaster declarations based on ICC ratio size as well as the percentage of granted major disaster declaration requests within the respective ICC group.

TABLE 3—NUMBER OF IA REQUESTS AND GRANTED IA REQUESTS BY ICC RATIO

ICC Ratio	Number of requests (2008–2013)	Number of approved requests (2008–2013)	Percentage of approved requests (2008–2013)	Percentage of approved requests in range (2008–2013)
>25	43	41	57.7%	95%
10–25	53	26	36.6%	49%
<10	57	4	5.6%	7%
Total	153	71	100%	

Based on the above data, there were 53 major disaster declaration requests that included IA with ICC ratios between 10 and 25; and 26 of these requests were declared major disasters that included IA. Hence, approximately half (26/53 = 49 percent) of major disaster declaration requests with ICC ratios between 10 and 25 that included IA were granted. FEMA believes this approval rate helps illustrate that other factors are taken into consideration when determining FEMA's recommendation especially in borderline events.

In addition, based on the above data, the higher the estimated cost of IA damages and the lower the State TTR, the more likely a major disaster declaration request authorizing IA was granted in the past. FEMA did not review TTR data when making these previous decisions; however there appears to be a past trend that decisions had an inverse correlation between estimated IA costs and State TTR. This is likely because past declaration criteria, such as State population, are highly correlated with State TTR. Furthermore, depictions of States' economic health, similar to TTR, were already captured in data from State major disaster declaration requests in the past. For example, the State median household income and the State TTR per capita are highly correlated because States that have a higher median household income also tend to have a higher TTR per capita. Thus, FEMA assumes that the impact of considering TTR in future major disaster declaration recommendations would be minimal because FEMA previously considered data that follows the same trend as TTR.

Furthermore, there were major disaster declaration requests that had high IA cost estimates, and though the State had a higher than average TTR, the major disaster declaration authorizing IA was still granted. FEMA recognizes that some disasters cause enough damage to overwhelm even the most prepared and fiscally capable States and local governments and that disasters may have special circumstances warranting assistance.

FEMA's intent in this proposed rule is to continue to take multiple factors into consideration in addition to TTR. Therefore, fiscal capacity would be more relevant following events where it is not clear whether or not the State and affected local governments are, in fact, overwhelmed.

Based on the above analysis, FEMA concluded that even though fiscal capacity is a new factor, it would not have an impact on the overall number of major disaster declarations granted each year that authorize IA because FEMA previously followed a trend that utilized similar economic data and takes various factors into account. Even though FEMA did not collect or factor the TTR per State in previous major disaster declaration recommendations that included IA to the President there was a correlation; and FEMA assumes that IA declarations will follow a similar trend in the future.

FEMA also intends to review data on per capita personal income by local area to ascertain a local government's fiscal capacity. FEMA previously evaluated data on median household income per county and foresees minimal impact from also reviewing per capita personal income by local area because both data points are indicators of the economic circumstances of local areas.

Again, FEMA proposes the use of the fiscal capacity factor in future recommendations regarding major disaster declarations that include IA and acknowledges that the new data points would be utilized in conjunction with several other data points. FEMA would continue to use a myriad of factors and data to formulate its recommendations to the President on major disaster declarations that authorize IA. No single data point or factor would singularly affect FEMA's recommendation nor would each individually affect the President's ultimate determination of whether a major disaster declaration authorizing IA is warranted.

9. Cumulative Impact of the Proposed Rule

FEMA has reviewed the proposed rule's impact on States that request a Presidential major disaster declaration that authorizes IA. FEMA estimates the cumulative impact of all the factors together will result in a minor burden increase for States to provide more information in their requests and for FEMA to retrieve data for its consideration on requests. The net quantified impact is a ten-year total cost of $18,233. This cost may be offset by cost savings from efficiencies attributed to the information FEMA currently iteratively requests from States but are not captured in the current regulations. FEMA anticipates no cumulative impact to average annual transfer payments based on the inclusion of all the proposed factors. Based on the above analysis, FEMA estimates that this proposed rule is not an economically significant rulemaking because the proposed rule would impose an

additional average annual burden of less than $2,000 [35] on the public and FEMA.

10. Marginal Analysis of the Proposed Factors

The following table provides a breakdown of each IA declaration factor included in the proposed rule. It also identifies which factors are new or previously considered. Activity costs per year and associated benefits are also included. The proposed rule would not change the total amount of Federal assistance available to individuals and households. A more detailed table providing additional information is also included in the rulemaking docket on *www.regulations.gov.*

TABLE 4—IA DECLARATIONS FACTOR MARGINAL ANALYSIS

Factor	Status	Activity cost per year	Benefits
Fiscal Capacity: Total Taxable Resources (TTR) of the State 44 CFR § 206.48(b)(1)(i)(A)	New	$11—FEMA will spend 10–15 minutes a year retrieving and storing Treasury data (including all State data in one retrieval).	Informs States that FEMA may assess State's taxable resources based on TTR and may use TTR to depict State economic growth or decline and relative fiscal capacity with comparably-sized States or the Nation.
Fiscal Capacity: Gross Domestic Product (GDP) by State 44 CFR § 206.48(b)(1)(i)(B)	New	$11—FEMA will spend 10–15 minutes a year for retrieving and storing BEA GDP data (including all State & Territory data in one retrieval).	Informs States that FEMA may assess State fiscal capacity with this data point when TTR data is not available or if the TTR data is inaccurate due to the 2 year lag in the data update.
Fiscal Capacity: Per Capita Personal Income by Local Area 44 CFR § 206.48(b)(1)(i)(C)	New	$19—FEMA will spend 15–30 minutes a year for retrieving and storing BEA Per Capita Personal Income data annually (including data on all local areas in one retrieval).	Provides FEMA the flexibility to use information on the local fiscal capacity characteristics to judge IA needs in disaster affected areas.
Fiscal Capacity: Other Factors 44 CFR § 206.48(b)(1)(i)(D)	New	$0—State time will vary and data will be used on a case-by-case basis as needed.	Provides FEMA the flexibility to use any other data or information on a State or local area's fiscal capacity to judge disaster needs in affected areas.
Resource Availability: State Tribal and Local Government Non-Governmental Organizations (NGO) and Private Sector Activity 44 CFR § 206.48(b)(1)(ii)(A)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Resource Availability: Cumulative Effect of Recent Disasters 44 CFR § 206.48(b)(1)(ii)(B)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Resource Availability: State Services 44 CFR § 206.48(b)(1)(ii)(C)	New	$784.5—15 minutes for States to discuss why the State does not have sufficient funding to provide adequate State services to its own citizens after a major disaster.	Provides FEMA more information to evaluate the resources States have used. States consider their resources in their request.
Resource Availability: Planning After Prior Disasters 44 CFR § 206.48(b)(1)(ii)(D)	New	$784.5—15 minutes for States to discuss improvements to their State IA programs and any disaster planning that occurred after prior major disasters.	Provides FEMA more information to evaluate the State's resource planning. State's demonstrate they have planned after recent disasters.
Uninsured Home and Personal Property Losses: The cause of damage 44 CFR § 206.48(b)(2)(i)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The jurisdictions impacted and concentration of damage 44 CFR § 206.48(b)(2)(ii)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The number of homes impacted and degree of damage 44 CFR § 206.48(b)(2)(iii)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The estimated cost of assistance 44 CFR § 206.48(b)(2)(iv)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The homeownership rate of impacted homes 44 CFR § 206.48(b)(2)(v)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: The percentage of affected households with insurance coverage appropriate to the peril 44 CFR § 206.48(b)(2)(vi)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses: Other relevant preliminary damage assessment data 44 CFR § 206.48(b)(2)(vii)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.

[35] FEMA estimated the first year implementation cost of approximately $3,700 and $1,600 annually for subsequent years in previous section of this regulatory analysis.

TABLE 4—IA DECLARATIONS FACTOR MARGINAL ANALYSIS—Continued

Factor	Status	Activity cost per year	Benefits
Disaster Impacted Population Profile: The percentage of the population for whom poverty status is determined 44 CFR § 206.48(b)(3)(i)	Previously Considered.	$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits 44 C.F.R § 206.48(b)(3)(ii)	Previously Considered.	$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The pre-disaster unemployment rate 44 CFR § 206.48(b)(3)(iii)	Previously Considered.	$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population that is 65 years old and older 44 CFR § 206.48(b)(3)(iv)	Previously Considered.	$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population 18 years old and younger 44 CFR § 206.48(b)(3)(v)	Previously Considered.	$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: The percentage of the population with a disability 44 CFR § 206.48(b)(3)(vi)	Previously Considered.	$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation
Disaster Impacted Population Profile: The percentage of the population who speak a language other than English and speak English less than ''very well'' 44 CFR § 206.48(b)(3)(vii)	Previously Considered.	$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Disaster Impacted Population Profile: Any unique considerations regarding American Indian and Alaskan Native Tribal populations that may not be reflected in the U.S. Census Bureau data 44 CFR § 206.48(b)(3)(viii)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Impact to Community Infrastructure: Life Saving and Life Sustaining Services 44 CFR § 206.48(b)(4)(i)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Impact to Community Infrastructure: Essential Community Services 44 CFR § 206.48(b)(4)(ii)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Impact to Community Infrastructure: Transportation Infrastructure and Utilities. 44 CFR § 206.48(b)(4)(iii)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Casualties: The number of missing, injured, or deceased individuals 44 CFR § 206.48(b)(5)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Disaster Related Unemployment: The number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance 44 CFR § 206.48(b)(6)	Previously Considered.	$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
All Factors : All Data Points § 206.48(b)	6 New & 22 Previously Considered.	$3752 in the first year and $1609 in the subsequent annual reoccurring costs—Increase time burden due to new factors and time for the State to read and understand the new regulations.	Informs States with the information that FEMA considers when deciding whether to recommend an IA declaration to the President's Office.

11. Regulatory Alternatives

FEMA includes the regulatory alternatives to the proposed rule and the reasons for choosing not to use each alternative in the following discussion. The decision on each alternative was based on qualitative factors and not on a quantitative analysis of these alternatives. When possible, FEMA acknowledges if the respective alternative could have an impact on economic transfer payments or costs.

a. Voluntary, Faith and Community Based Organizations Resources

FEMA considered removing the information on resources available from voluntary, faith, and community based organizations during disasters from its list of determining factors. Stakeholders suggested removing these organizations because their availability may be limited by their financial circumstances, their donors' economic situations, and the circumstances of their volunteers. FEMA recognizes this concern but believes that information on the activities of these organizations is valuable because it can enhance the picture of disaster needs at a local level and may offset or reveal a need for supplemental Federal assistance. FEMA

also recognizes that these organizations have limited resources, and considers this point when determining the need for an IA declaration. FEMA anticipates there could be impacts on transfer payments due to changes in the number of disaster declarations if resources available from voluntary, faith, and community based organizations were no longer considered. If FEMA was to remove this factor from consideration in major disaster declaration request for IA, it could potentially move transfer payments in either direction, depending on the situation. For example, if a State no longer describes how their voluntary agencies are overwhelmed, then FEMA may not be inclined to recommend a major disaster declaration that authorizes IA and would decrease transfer payments. On the other hand, FEMA could potentially be more inclined to recommend a major disaster declaration that authorizes IA without information on the voluntary agencies' resources, which could increase transfer payments.

b. Maintain the 44 CFR 206.48(b)(6) Table

FEMA evaluated the utility of the current 44 CFR 206.48(b)(6) table listing the average amount of IA based on State size, and determined it causes confusion with stakeholders. This table of averages does not set a threshold for recommending Individual Assistance, but was intended as guidance to States and voluntary agencies as they develop plans and programs to meet the needs of disaster survivors. FEMA determined that the table should be removed because it causes confusion among States, and may be used incorrectly as a threshold for whether a State should request Individual Assistance. Furthermore, the table has been interpreted by States to suggest that State population is the main factor or the only factor in determining State capability or fiscal capacity. In the proposed rule, FEMA would continue to consider various factors when making its recommendation. FEMA did not quantify the impacts of this alternative but assumed there would not be economic impacts from maintaining the table because other factors are already considered. FEMA has chosen to remove the table for clarification purposes.

c. Automatically Trigger Contiguous Counties and States

Based on stakeholder recommendations, FEMA considered whether to include a provision that would allow contiguous affected counties and States to be automatically declared as a major disaster after an event that crosses the borders of a declared State or county. FEMA recognizes that State or county lines do not bind disaster events geographically, but in considering whether to declare a particular area, FEMA must consider the damages in the area as well as the capabilities of the jurisdictional governments. The Stafford Act requires that a Governor's request for a major disaster declaration be based on a finding that the disaster is of such severity and magnitude to be beyond the capabilities of the State and affected local governments to effectively respond. 42 U.S.C. 5170(a). Thus, FEMA is proposing to maintain the requirement that each county and State must request a major disaster declaration after determining that the disaster damages and impacts are beyond the capabilities of the affected area's State or local government. FEMA cannot automatically grant a major disaster declaration based on proximity to other declared areas without evidence that the disaster damage and impacts are beyond the affected area's capabilities.

FEMA did not quantify the impacts of this alternative but does acknowledge there could be an increase in transfer payments if FEMA automatically declared affected counties and States contiguous to a declared State or county. FEMA assumed this alternative would result in transfer payment increases because specifics about damage information and resource capabilities of nearby counties would not be considered and less impacted counties would likely be provided assistance based on geographic location rather than need.

d. Considering Negative Impact on Businesses

FEMA considered including the impact of an incident on businesses in affected areas, including business losses based on stakeholder recommendations. FEMA is proposing a revised factor that considers the impact to businesses because the negative impacts to employers and employees may affect a community's ability to recover. Business losses alone, however, will not result in a Presidential major disaster declaration that authorizes IA because the IA grant programs do not provide assistance to businesses. Instead, FEMA considers the effect that business disruptions have on disaster survivors. For example, if disaster survivors lose work or become unemployed due to business impacts from a disaster, this information may highlight an increased need for DUA. In addition, the Small Business Administration (SBA) has separate statutory authority and programs, which may be available to assist businesses absent a Presidential major disaster declaration. FEMA did not quantify the impacts of the alternative considering business losses separately from business impacts to disaster survivors.

e. Linking Individual Assistance Cost Factor With Public Assistance Cost Factor

FEMA considered aligning the financial indicators for IA and PA major disaster declarations based on stakeholder recommendations. Currently, FEMA evaluates the need for a Public Assistance major disaster declaration by reviewing the estimated cost of Federal and non-federal public assistance against the statewide population to give a measure of the per capita impact within the State. 44 CFR 206.48(a)(1). That factor also establishes a $1 million threshold, based on the proposition that even the smallest population States have the capability to cover that level of public assistance infrastructure damage. Under FEMA's current regulations, there is no corresponding IA single indicator designed to evaluate the total cost of the disaster against the capability of a requesting State.

FEMA chose not to use the Public Assistance per capita indicator measure and instead choose to utilize the fiscal capacity factor as indicators of a State's fiscal capability to meet the needs of individuals after an event. FEMA considers multiple factors and does not believe a set limit, even based on estimated damages and population, is an appropriate indicator due to the varying needs and circumstances of disaster survivors. FEMA did not quantify the impact of this alternative but does assume that it could have an impact on transfer payments due to changes to the number of major disaster declarations that authorize IA.

f. Use of Factor Thresholds

Some stakeholders indicated that they would prefer specific ''hard'' thresholds that indicate whether a State would be eligible to receive a major disaster declaration authorizing IA. The stakeholders felt that established thresholds would give States a clear idea of what level of damage and need the State must have before requesting assistance. The stakeholders believed that this would prevent States from spending the time compiling the data and requesting a declaration when they have not sustained enough damage to qualify for a major disaster declaration that authorizes IA. FEMA rejected a threshold indicator because it would be

inconsistent with the principles of Section 320. FEMA also decided to not pursue using thresholds because they would be too restrictive, and would not be appropriately flexible to assess the various scenarios that demonstrate the State's need for a declaration authorizing IA. FEMA assumes this alternative could have an impact on transfer payments due to changes in the number of declarations and could reduce State costs if they chose not to pursue a declaration request for IA.

g. Homes in Foreclosure

Some stakeholders stated that if an area with a high foreclosure rate is affected by a disaster, then these homes without an owner would be a greater burden to the State during the recovery process. FEMA's IA programs do not provide any form of assistance for foreclosed homes, and repair assistance is available only for owner-occupied primary residences. FEMA recognizes that high levels of foreclosure may be associated with economic difficulties in the affected area which could negatively impact a community's ability to recover. If a State believes that homes in foreclosure will impact their capability to respond to the disaster, then the State may articulate this concern in the narrative portion of their declaration request. FEMA considers all relevant information provided in a State's request. *See* 44 CFR 206.48. However, FEMA believes other factors including poverty level, pre-disaster unemployment, and per capita personal income will be adequate indicators of economic health, and has chosen to not include home foreclosure rates in the proposed evaluation factors.

h. Do Not Include Fiscal Capacity Indicators

FEMA considered the alternative of not including fiscal capacity indicators. This option would leave discretion on how to assess State capabilities up to FEMA and the White House without identifying quantified data utilized or encouraging States to provide more information on their fiscal capacity. FEMA chose to include the fiscal capacity indicators because they provide objective quantified data for FEMA and the White House to assess the capabilities of a State. The factor also provides notice to the State on what will be used to evaluate it and that the State can provide additional information describing their fiscal capabilities. In this alternative, the Federal cost of the proposed rule would decrease by a small amount, approximately $40 a year, based on FEMA no longer having to retrieve BEA and Treasury data. Considering the low cost and potentially useful information this factor could provide, FEMA chose to maintain fiscal capacity information in the proposed rule.

i. Do Not Include State Resources Indicators

FEMA considered the alternative of not including State resource indicators. If this factor was not included, FEMA and the White House's ability to assess if States have programs suitable to respond to and recover from the disaster and if the States have prepared or improved their programs after recent disasters would not be improved. The State cost of the proposed rule would decrease, approximately $1,570 annually for all State's major disaster declaration requests that include IA. Considering the low cost, approximately $38 per request, and the potentially useful information this factor information could provide, FEMA chose not to use this alternative.

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.'' The RFA also provides that if a regulatory flexibility analysis is not required for this reason, the agency must certify in the rulemaking document that the rulemaking will not ''have a significant economic impact on a substantial number of small entities'' and must include a statement providing the factual basis for such certification.

This proposed rule provides States with factors FEMA would consider when making a recommendation on a major disaster declaration that authorizes IA and codifies many factors that are currently considered but are not adequately captured in 44 CFR 206.48(b). This rule will not directly impact small businesses, small not-for-profit organizations, and small governmental jurisdictions. States are not considered small entities under the RFA since they have populations of more than 50,000.[36] Hence, FEMA certifies under 5 U.S.C. 605(b) that this proposed rule would not, if promulgated, 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. FEMA has determined that this proposed rule can be excluded from this assessment as the proposed rule meets the criteria set forth in 2 U.S.C. 1503(4), which states, ''This chapter shall not apply to . . . any provision in a proposed or final Federal regulation that—. . . (4) 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.'' 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. As explained below, 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.

NEPA implementing regulations governing FEMA activities at 44 CFR 10.8(d)(2)(ii) categorically exclude the preparation, revision, and adoption of regulations from the preparation of an EA or EIS, where the rule relates to actions that qualify for categorical

[36] The District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, which are considered States under 44 CFR 206.2(a)(22), all have populations greater than 50,000.

exclusions. Most activities under Section 408 and prior Section 411 of the Stafford Act pertaining to temporary housing and financial assistance are categorically excluded from NEPA review under 44 CFR 10.8(d)(2)(xix)(D) and (F). Before undertaking other activities that are not categorically excluded (*e.g.,* placement of manufactured temporary housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction), FEMA follows the procedures set forth in 44 CFR part 10 to assure NEPA compliance.

In addition, this proposed rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is falls into information and data gathering and reporting efforts in support of emergency and disaster response and recovery and hazard mitigation. Therefore, the activity this rule applies to meets FEMA's Categorical Exclusion in 44 CFR 10.8(d)(2)(xviii)(E). Because no other extraordinary circumstances have been identified, this rule does not require the preparation of either an EA or an EIS as defined by NEPA.

E. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

In this proposed rule, FEMA is seeking a revision to the already existing collection of information, OMB Control Number 1660–0009, because FEMA has refined our estimates related to 1660–0009. This proposed rule serves as the 60-day comment period for this proposed change pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

Collection of Information

Title: The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments.

Type of information collection: Revision of a currently approved collection.

OMB Number: 1660–0009.

Form Titles and Numbers: FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency.

Abstract: When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence, may request a major disaster declaration or an emergency declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgement and processing. The information obtained by joint Federal, State, and local preliminary damage assessments will be analyzed by FEMA regional senior level staff. The regional summary and the regional analysis and recommendation will include a discussion of State and local resources and capabilities, and other assistance available to meet the disaster related needs. The Administrator of FEMA provides a recommendation to the President and also provides a copy of the Governor's request. In the event the information required by law is not contained in the request, the Governor's request cannot be processed and forwarded to the White House. In the event the Governor's request for a major disaster declaration or an emergency declaration is not granted, the Governor may appeal the decision.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 622.

Estimated Number of Responses: 355.

Estimated Total Annual Burden Hours: 11,737.

The previously approved Total Annual Burden Hours was 11,715 hours. Based on the proposed rule's minor increase in burden, the new estimated Total Annual Burden Hours is 11,737 hours. This increase of 22 hours is attributed to the additional information FEMA requests in order to evaluate the need for a major disaster declaration that authorizes IA, specifically requesting a narrative discussion on improvements to State services provided to individuals in response to a disaster.

Table A.12 provides estimates of annualized cost to respondents for the hour burdens for the collection of information.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS [37]

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent [38]	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate [39]	Total annual respondent cost
State, Local or Tribal Government.	Request for Presidential Disaster Declaration Major Disaster or Emergency/ FEMA Form 010–0–13.	622	.5707	9.062	3,217	$76.52	$246,164.84
State, Local or Tribal Government.	Initial Data Gathering for Governor's Request/No Form.	622	.57	24	8,520	33.10	282,012.00
Total		622			11,737		528,176.84

Estimated Cost: $3,480,709.36.

The estimated annual cost to respondents for the hour burden is $528,176.84. FEMA describes cost increases specifically for the proposed rule in the previous Regulatory Analysis Section. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal government is unchanged at $3,038,639.60.

[37] Note: Numbers rounded due to rounding in ROCIS.

[38] Note: The number of responses per respondent for entering in Request for Presidential Disaster Declaration Major Disaster or Emergency/FEMA Form 010–0–13 has been updated to 0.5707. FEMA reanalyzed this number to more accurately reflect the change in the proposed rule. FEMA calculated 0.5707 based on the previous supporting statement's total number of response hours, 3,195 divided by the number of hours, 9, resulting in 355, and then divided by 622.

[39] Note: The ''Avg. Hourly Wage Rate'' for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

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 completed a Privacy Threshold Analysis for this proposed rule. Any information will be collected in existing FEMA Form 010–0–13 and will still only include the Governor's point of contact and general office phone number as well as other State specific and disaster specific information of a non-personally-identifiable nature. The information received through the form is neither retrieved nor retrievable by personally identifiable information (PII). Any retrieval would be done by utilizing State specific or disaster specific information of a non-identifiable nature. This rulemaking does not impact FEMA's collection of PII in the disaster declarations process and form and no Privacy Impact Assessment or System of Records Notice is required at this time.

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.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that this rule does not have a substantial direct effect 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. The disaster assistance granted by a major disaster declaration addressed by this proposed rule is provided to individuals and families, and would not have tribal implications.

Moreover, this rule proposes to revise regulations intended to address a *State's* request for an IA declaration. Although Section 1110 of SRIA authorizes Indian Tribal governments to request a declaration directly, SRIA charged FEMA to implement that authority separately by rulemaking. Although FEMA is currently evaluating tribal declaration requests using its existing regulations, FEMA is implementing Section 1110 through a separate process, which will involve extensive consultation with Tribes, issuance of forthcoming pilot guidance, and eventually, regulations.

FEMA notes that Section 1109 of SRIA requires FEMA to develop this rulemaking ''in *cooperation* with State, local, *and Tribal* emergency management agencies.'' To that end, FEMA sought input from State, local and Tribal stakeholders at the Spring 2013 NEMA conference. In addition, in conjunction with the effort to initiate development of Section 1110 of SRIA, FEMA sought input from Tribal and other stakeholders via a **Federal Register** notice requesting comments on, among other things, the IA criteria that FEMA uses to make recommendations to the President for major disaster declarations in 44 CFR 206.48(b). 78 FR 15026, 15028–15029 (March 8, 2013). In addition, throughout March and April 2013, FEMA held listening sessions [40] with tribal leadership, their organizations and stakeholders to present information regarding FEMA programs, the Stafford Act and its amendment, and the declarations process.

FEMA received input that many members of Tribes do not have insurance and are not homeowners. Data regarding whether a home has insurance and is rented or owned is typically gathered during the PDA process. In addition, Tribes were concerned with the use of unemployment data at a county level because the Tribal unemployment level could be much higher. FEMA will always consider relevant information when evaluating the requests for a major disaster declaration that authorizes IA. If the county level unemployment level is inaccurate because Tribal unemployment is higher, then FEMA encourages Tribes to provide data that is more accurate to the State or FEMA in their disaster request. FEMA considered this input in the development of this rule, and welcomes additional comments on this matter.

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

[40] Please refer to the following Web site for further information on FEMA's listening sessions as well FEMA's consultation efforts: *https://www.fema.gov/fema-tribal-affairs/consultation-archive-procedures-request-emergency-or-major-disaster-declarations.*

consult with State and local officials before implementing any such action.

FEMA has reviewed this proposed rule under Executive Order 13132 and has determined that this rule does not have a 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, and therefore does not have federalism implications as defined by the Executive Order. The disaster assistance granted by a major disaster declaration addressed by this proposed rule is provided to individuals and families, and would not have federalism implications.

I. Executive Orders 11988, Floodplain Management

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 Executive Order 11988 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 a floodplain(s). The changes proposed in this rule would not have an effect on floodplain management. This proposed rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's IA Program. When FEMA undertakes specific actions in administering IA 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), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order. This serves as the notice that is required by the EO.

J. Executive Order 11990, Protection of Wetlands

Executive Order 11990, ''Protection of Wetlands,'' 42 FR 26961, May 24, 1977, sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (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. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 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. The changes proposed in this rule would not have an effect on land use or wetlands. This proposed rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's IA Program. When FEMA undertakes specific actions in administering IA that may have such effects (*e.g.,* placement of manufactured housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order.

K. 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 programs, policies, and activities, as well as this proposed rulemaking. This proposed rulemaking contains provisions that ensure that

FEMA's activities will not have a disproportionately high or adverse effect on human health or the environment or subject persons to discrimination because of race, color, or national origin. This proposed rule adds a provision specifically related to the demographics of a disaster impacted population. FEMA is requesting the demographics of a disaster impacted area because the demographics may identify additional needs that require a more robust community response and might otherwise delay a community's ability to recover from a disaster.

No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

L. 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 will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized. The rule is not a ''major rule'' within the meaning of the CRA. It will not have an annual effect on the economy of $100,000,000 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 206GG

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.

For the reasons stated in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR part 206, subpart B, as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

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

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

■ 2. Revise § 206.48(b) to read as follows:

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

* * * * *

(b) *Factors for the Individual Assistance Program.* The following factors are used to evaluate the need for supplemental Federal assistance to individuals under the Stafford Act, as Federal assistance may not supplant the combined capabilities of a State, Tribal, or local government. Federal Individual Assistance, if authorized, is intended to assist eligible individuals and families when State, Tribal, and local government resources and assistance programs are overwhelmed. State fiscal capacity (44 CFR 206.48(b)(1)(i)) and uninsured home and personal property losses (44 CFR 206.48(b)(2)) are the principal factors that FEMA will consider when evaluating the need for supplemental Federal assistance under the Individuals and Households Program. If the need for supplemental Federal assistance under the Individuals and Households Program is not clear from the evaluation of the principal factors, FEMA will turn to the other factors to determine the level of need.

(1) *State fiscal capacity and resource availability.* FEMA will evaluate the availability of State resources, and where appropriate, any extraordinary circumstances that contributed to the absence of sufficient resources.

(i) *Fiscal capacity (Principal Factor for Individuals and Households Program).* Fiscal capacity is a State's potential ability to raise revenue from its own sources to respond to and recover from a disaster. The following data points are indicators of fiscal capacity.

(A) *Total Taxable Resources (TTR) of the State.* TTR is the U.S. Department of Treasury's annual estimate of the relative fiscal capacity of a State. A low TTR may indicate a greater need for supplemental Federal assistance than a high TTR.

(B) *Gross Domestic Product (GDP) by State.* GDP by State is calculated by the Bureau of Economic Analysis. GDP by State may be used as an alternative or supplemental evaluation method to TTR.

(C) *Per capita personal income by local area.* Per capita personal income by local area is calculated by the Bureau of Economic Analysis. A low per capita personal income by local area may indicate a greater need for supplemental Federal assistance than a high per capita personal income by local area.

(D) *Other factors.* Other limits on a State's treasury or ability to collect funds may be considered.

(ii) *Resource availability.* Federal disaster assistance under the Stafford Act is intended to be supplemental in nature, and is not a replacement for State emergency relief programs, services, and funds. FEMA evaluates the availability of resources from State, Tribal, and local governments as well as non-governmental organizations and the private sector.

(A) *State, Tribal, and local government; Non-Governmental Organizations (NGO); and private sector activity.* State, Tribal, and local government, Non-Governmental Organizations, and private sector resources may offset the need for or reveal an increased need for supplemental Federal assistance. The State may provide information regarding the resources that have been and will be committed to meet the needs of disaster survivors such as housing programs, resources provided through financial and in-kind donations, and the availability of affordable (as determined by the U.S. Department of Urban and Housing Development's fair market rent standards) rental housing within a reasonable commuting distance of the impacted area.

(B) *Cumulative effect of recent disasters.* The cumulative effect of recent disasters may affect the availability of State, Tribal, local government, NGO, and private sector disaster recovery resources. The State should provide information regarding the disaster history within the last 24-month period, particularly those occurring within the current fiscal cycle, including both Presidential (public and individual assistance) and gubernatorial disaster declarations.

(C) *State services.* The State may provide information regarding the circumstances causing the State to lack the resources to provide sufficient services to its citizens.

(D) *Planning after prior disasters.* States are encouraged to develop and continuously improve their own disaster assistance programs. States should identify new and existing individual assistance programs as well as improvements to existing individuals assistance programs made as a result of previous disasters. A State's failure to address limitations and shortfalls identified by FEMA or the State after previous events will also be considered.

(2) *Uninsured home and personal property losses (Principal Factor for Individuals and Households Program).* Uninsured home and personal property losses may suggest a need for supplemental Federal assistance. The State may provide the following preliminary damage assessment data:

(i) The cause of damage.

(ii) The jurisdictions impacted and concentration of damage.

(iii) The number of homes impacted and degree of damage.

(iv) The estimated cost of assistance.

(v) The homeownership rate of impacted homes.

(vi) The percentage of affected households with sufficient insurance coverage appropriate to the peril.

(vii) Other relevant preliminary damage assessment data.

(3) *Disaster impacted population profile.* The demographics of a disaster impacted population may identify additional needs that require a more robust community response and delay a community's ability to recover from a disaster. FEMA will consider demographics of the impacted communities for the following data points as reported by the U.S. Census Bureau or other Federal agencies:

(i) The percentage of the population for whom poverty status is determined.

(ii) The percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits.

(iii) The pre-disaster unemployment rate.

(iv) The percentage of the population that is 65 years old and older.

(v) The percentage of the population 18 years old and younger.

(vi) The percentage of the population with a disability.

(vii) The percentage of the population who speak a language other than English and speak English less than ''very well.''

(viii) Any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State's request for a major disaster declaration that may not be reflected in the data points referenced in paragraphs (b)(3)(i)–(vii) of this section.

(4) *Impact to community infrastructure.* The following impacts to a community's infrastructure may adversely affect a population's ability to safely and securely reside within the community.

(i) *Lifesaving and life-sustaining services.* The effects of a disaster may cause disruptions to or increase the demand for lifesaving and life-sustaining services, necessitate a more robust response, and may delay a community's ability to recover from a disaster. The State may provide information regarding the impact on life saving and life sustaining services for a period of greater than 72 hours. Such services include but are not limited to police, fire/EMS, hospital/medical, sewage, and water treatment services.

(ii) *Essential community services.* The effects of a disaster may cause disruptions to or increase the demand for essential community services and delay a community's ability to recover from a disaster. The State may provide information regarding the impact on essential community services for a period greater than 72 hours. Such services include but are not limited to schools, social services programs and providers, child care, and eldercare.

(iii) *Transportation infrastructure and utilities.* Transportation infrastructure or utility disruptions may render housing uninhabitable or inaccessible. Such conditions may also affect the delivery of life sustaining commodities, provision of emergency services, ability to shelter in place, and efforts to rebuild. The State may provide information regarding the impact on transportation infrastructure and utilities for a period of greater than 72 hours.

(5) *Casualties.* The number of individuals who are missing, injured, or deceased due to a disaster may indicate a heightened need for supplemental Federal disaster assistance. The State may report the number of missing, injured, or deceased individuals.

(6) *Disaster related unemployment.* The number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance may indicate a heightened need for supplemental Federal assistance. This usually includes the self-employed, service industry workers, and seasonal workers such as those employed in tourism, fishing, or agriculture industries. The State may provide an estimate of the number of disaster survivors impacted under this paragraph as well as information regarding major employers affected.

Dated: October 29, 2015.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

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