raised. The comment period is extended until February 12, 2021.

Carolyn Hoskinson,

Director, Office of Resource Conservation and Recovery.

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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA–2020–0038]

RIN 1660–AA99

Cost of Assistance Estimates in the Disaster Declaration Process for the Public Assistance Program

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) is proposing a rule to substantively revise the ''Estimated cost of the assistance'' disaster declaration factor that FEMA uses to review a Governor's request for a major disaster under the Public Assistance Program. FEMA proposes revisions to this factor to more accurately assess the disaster response capabilities of the 50 States, the District of Columbia, and the U.S. territories (States), and to respond to the direction of Congress in the Disaster Recovery Reform Act of 2018, which requires FEMA to review its disaster declaration factors and update them via rulemaking, as appropriate.

DATES: All comments must be submitted by February 12, 2021.

ADDRESSES: You may submit comments on this proposed rule, identified by Docket ID FEMA–2020–0038, by the following method:

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

Comments on the proposed information collections included in this proposed rule should be submitted both to FEMA, as indicated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be identified by the appropriate OMB Control Number(s), addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Tod Wells, Deputy Director of Public Assistance, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, 202–646–3936, *fema-recovery-pa-policy@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION:

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 and Security Notice that is available via a link on the homepage of *http://www.regulations.gov.*

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

II. Executive Summary

Pursuant to 44 CFR 206.48(a), FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the Public Assistance (PA) program.[1] FEMA proposes to amend the factor in 44 CFR 206.48(a)(1) for ''estimated cost of the assistance,'' to raise the per capita indicator and the minimum threshold.[2]

Since 1986, FEMA has evaluated the estimated cost of Federal and non-Federal public assistance against the statewide population and used a per capita dollar amount (set at $1 in 1986) as an indicator that a disaster may warrant Federal assistance. The per capita indicator remained at $1 until 1999, when the Agency began adjusting the indicator for inflation in 1999 and annually thereafter.[3] Also in 1999, FEMA established a $1 million minimum threshold, meaning it would not recommend that the President authorize the PA program unless there was at least $1 million in damages resulting from the disaster and within the proposed area for Public Assistance. At the time, FEMA believed $1 million was a level of damage from which even the least populous States could recover with their own resources. FEMA has never increased the $1 million threshold. Additionally, FEMA also considers impacts at the local level and recent disasters in the 12 months prior to a declaration request to evaluate the impact to the State or locality.

In the Disaster Recovery Reform Act of 2018 (DRRA), Congress directed FEMA to give greater consideration to the recent multiple disasters and localized impacts factors when evaluating a request for a major disaster.[4] Congress also directed FEMA to generally review the factors it considers when considering a request for a major disaster, specifically the estimated cost of assistance factor, and to update the factors through rulemaking, as appropriate.[5]

The lack of increases to the per capita indicator from 1986 to 1999 has undercut the value of this factor as an indicator of State capacity given the 51 percent reduction in purchasing power during that time.[6] In addition, a State

[1] Under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170), the President may declare that a major disaster exists after finding, upon request by a State governor, that such disaster is beyond the capabilities of the State and affected local governments, and that Federal assistance is needed. FEMA receives the governor's request and makes a recommendation to the President whether such a declaration is warranted. *See* 44 CFR 206.37.

[2] *See* 44 CFR 206.48(a). Other factors include: Insurance coverage in force, hazard mitigation, and other Federal assistance programs. *Id.*

[3] At the time of drafting this proposed rule, the indicator was $1.50 in fiscal year 2019. *See* FEMA, Notice of Adjustment of Statewide per Capita Impact Indicator, 83 FR 53279 (Oct. 22, 2018).

[4] Sec. 1232 of Public Law 115–254, 132 Stat. 3460 (Oct. 5, 2018). However, as discussed below, FEMA does not propose to substantively amend 44 CFR 206.48(a)(2) because that factor is already sufficiently flexible to address the requirements of section 1232 of the DRRA.

[5] Sec. 1239 of Public Law 115–254, 132 Stat. 3466 (Oct. 5, 2018).

[6] April 1986 CPI–U was 108.6 and January 1999 CPI–U was 164.3. $(164.3 - 108.6)/108.6 = 51.29\%$. *See* Bureau of Labor Statistics, U.S. Department of Labor, ''Consumer Price Index, Archived Consumer Price Index Supplemental Files'': Historical CPI–U, November 2019, (available for download at *https://*

Continued

fiscal capacity factor pegged to $1 per person in 1986 does not capture more sophisticated measurements of fiscal capacity available through consideration of a State's total taxable resources. Accordingly, the current per capita indicator and minimum threshold do not provide an accurate measure of States' capabilities to respond to disasters.

With respect to the minimum threshold, while FEMA determined in 1999 that every State could handle at least $1 million in damages with their own resources, that figure has also not increased with inflation or rising State budgets and expenditures.[7] As a result, FEMA may recommend that the President declare major disaster declarations for incidents that, with more accurate assessment, would be found to be well within a State's financial capabilities to respond to on its own. FEMA proposes to adjust these factors so that it may more closely adhere to the law which authorizes Federal disaster assistance only when an event ''is beyond the capabilities'' of the State and affected local governments.[8]

FEMA proposes to increase the per capita indicator to account for increases in inflation from 1986 to 1999, and to adjust the individual States' indicators by their total taxable resources (TTR). These changes will allow FEMA to more accurately gauge a State's fiscal capacity by accounting for taxable resources other than the State's population, such as business income, undistributed corporate profits, and out-of-state residents. FEMA also proposes to increase the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter.

FEMA also proposes to use the U.S. Census Bureau's annual population estimates produced under the Population Estimates Program (PEP) instead of the decennial census population data produced every 10 years, which FEMA currently uses to calculate each State's Cost of Assistance (COA) Indicator. By increasing the per capita indicator and the minimum threshold, and using more current population data, FEMA's recommendation to the President will be a better informed and more accurate assessment of whether an incident exceeds State capabilities. The resulting reduction in disaster declarations for smaller incidents will allow FEMA to better focus its efforts and resources on larger disasters without the complications of reallocating resources from multiple smaller-scale commitments. Collectively, these changes would provide a better distribution of responsibilities between the States and the Federal Government, and will incentivize States to invest more in response, recovery, and mitigation capabilities, and lead to a more resilient and prepared Nation.

With respect to the recent multiple disasters and localized impacts factors, FEMA proposes not to substantively amend 44 CFR 206.48(a)(2) and (5). As is discussed below, these factors are already sufficiently flexible to address the requirements of section 1232 of the DRRA. FEMA also does not propose at this time to substantively amend the other declaration factors at 44 CFR 206.48(a)(3) (''Insurance coverage in force''), (4) (''Hazard mitigation''), and (6) (''Programs of other Federal assistance'') because they already provide adequate consideration of important information for FEMA's assessment of a State's capabilities to respond to an event, while also providing sufficient flexibility for FEMA to account for a variety of circumstances across the States.

Importantly, this proposed rule will not affect FEMA's recommendations on direct requests for a major disaster declaration received from Tribal governments. For direct requests from Tribal governments, FEMA relies on the Tribal Declarations Pilot Guidance and criteria in that guidance instead of 44 CFR 206.48.[9]

FEMA also proposes minor technical and corresponding grammatical changes to 44 CFR 206.48 to ensure consistent language between the Public Assistance declaration factors in 44 CFR 206.48(a) and the Individual Assistance factors in 44 CFR 206.48(b).

III. Background

The Disaster Relief Act of 1974,[10] which was amended and renamed the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) in 1988,[11] formally established the foundation of the current disaster assistance system. Generally, FEMA coordinates the Federal Government's response to major disasters and provides various forms of financial and direct assistance. One of the primary types of financial assistance FEMA provides is through the PA program.[12] FEMA provides financial assistance to States, Tribes, Territories, and local governments and certain private non-profit entities for debris removal,[13] emergency protective measures,[14] and the repair, restoration, and replacement of infrastructure damaged or destroyed by a disaster event.[15] Repair and replacement assistance, known as ''permanent work,'' helps jurisdictions to repair or replace a wide variety of infrastructure including buildings, roads, bridges, and sewer and water systems.

Before an affected jurisdiction can receive funding through the PA program, the President of the United States must authorize it through a declaration of a major disaster or emergency.[16] To obtain a declaration, the Governor must make a request through FEMA.[17] Upon receipt, FEMA is responsible for evaluating the Governor's request and providing a recommendation to the President regarding its disposition.[18]

When considering a jurisdiction's request for a major disaster declaration authorizing the PA program, FEMA considers all relevant information including, but not limited to, six specific factors.[19] These specific factors are:

1. Estimated cost of the assistance; [20]
2. localized impacts; [21]

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www.bls.gov/cpi/tables/supplemental-files/home.htm).

[7] *See* Government Accountability Office (GAO), Federal Disaster Assistance: Improved Criteria Needed to Assess Eligibility and a Jurisdiction's Capability to Respond and Recover On Its Own, GAO–12–838 (2012); Department of Homeland Security (DHS), Office of Inspector General (OIG), Opportunities to Improve FEMA's Public Assistance Preliminary Damage Assessment Process, OIG–12–79 (2012).

[8] *See* section 401 of the Stafford Act (42 U.S.C. 5170).

[9] See FEMA, Tribal Declarations Pilot Guidance, available at: *https://www.fema.gov/tribal-declarations-pilot-guidance.* Notice of availability published at 82 FR 3016 (Jan. 10, 2017).

[10] Disaster Relief Act of 1974, Public Law 93–288 (1974).

[11] Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707 (1988); Public Law 93–288 (1974), as amended; 42 U.S.C. 5121 *et seq.*

[12] *See* 42 U.S.C. 5172.

[13] *See* 44 CFR 206.224.

[14] *See* 44 CFR 206.225.

[15] *See* 44 CFR 206.226.

[16] *See* 42 U.S.C. 5170b, 5192; *see also* 44 CFR 206.38 and 206.40.

[17] 42 U.S.C. 5170 & 5191. The Chief Executive of an Indian Tribal government may also request a major disaster declaration from the President under the Tribal Declarations Pilot Guidance. FEMA, Tribal Declarations Pilot Guidance, available at: *https://www.fema.gov/tribal-declarations-pilot-guidance.* Notice of availability published at 82 FR 3016 (Jan. 10, 2017). The factors FEMA considers when reviewing a request submitted under the Tribal Declarations Pilot Guidance are not a part of the factors FEMA considers under 44 CFR 206.48(a) and are outside the scope of this proposed rulemaking.

[18] *See* 44 CFR 206.37(c).

[19] *See* 44 CFR 206.48(a).

[20] *Id.* at § 206.48(a)(1).

[21] *Id.* at § 206.48(a)(2).

3. insurance coverage in force; [22]
4. hazard mitigation; [23]
5. recent multiple disasters; [24] and
6. programs of other Federal assistance.[25]

FEMA evaluates every request with regard to each of these delineated factors, to the extent applicable. However, there is a strong correlation between the first factor, the estimated cost of the assistance, and the likelihood that FEMA will recommend that the President issue a major disaster declaration.

On October 5, 2018, the President signed the Disaster Recovery Reform Act (DRRA).[26] Section 1239 of the DRRA directs FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors. Further, Section 1232 of the DRRA directs the FEMA Administrator to give ''greater consideration'' to the localized impacts and recent multiple disasters factors and to make corresponding adjustments to FEMA policies and regulations. FEMA now proposes to amend 44 CFR 206.48(a) to make changes to the estimated cost of assistance factor. With respect to the recent multiple disasters and localized impacts factors, FEMA evaluated the provision of the DRRA as well as the current factors in regulation and determined that the regulation is sufficiently flexible to address the DRRA requirements. On May 1, 2019, FEMA issued guidance to Regional Administrators directing them to include in their recommendations appropriate and fulsome information regarding severe local impacts and the history of recent multiple disasters.[27] As is discussed below, FEMA requests comment on whether revisions to the recent multiple disasters factor are necessary.

A. Cost of Assistance Estimates

1. Creation of the Per Capita Indicator

Pursuant to 44 CFR 206.48(a)(1), FEMA evaluates the estimated cost of Federal and non-Federal public assistance resulting from an incident to inform its recommendation to the President of whether an incident is of such severity and magnitude that it is beyond the capabilities of the State and warrants Federal assistance under a major disaster declaration. To make this estimation, FEMA calculates the estimated cost of assistance, generally determined from joint FEMA-State Preliminary Damage Assessments, against the statewide population and if the estimated per capita dollar amount exceeds $1.50 (fiscal year (FY) 2019 per capita indicator),[28] FEMA considers this an indicator that the incident is of such a size and magnitude that it may warrant Federal assistance for the State under a major disaster declaration. In other words, FEMA relies on the per capita indicator to assess the financial impact of an incident on a State and as an indicator of whether the State is overwhelmed and unable to effectively respond to an event on its own.

FEMA publishes the updated per capita indicator in the **Federal Register** each year.[29] FEMA multiplies the indicator by the impacted State's most recent decennial population to determine the amount of damage that a State is expected to be able to independently manage without the need for supplemental Federal assistance (the State Cost of Assistance (COA) Indicator). For example, if an event occurred in FY2019 in a State with a 2010 decennial census population of 1,500,000, FEMA would multiply that population by the $1.50 indicator and arrive at a State COA indicator of $2,250,000.[30] If the estimated cost of assistance exceeds $2,250,000, FEMA would consider this a strong indicator that the State is overwhelmed and in need of supplemental Federal assistance.

Although FEMA considers every request for a Presidential major disaster declaration in light of each applicable regulatory factor, the probability of an incident being declared a major disaster and that incident having exceeded the State COA indicator in disaster damage between 2005 and 2014 was over 80 percent (494 of 589 declared major disasters).[31] In other words, whether damage assessments find an amount of damage that meets or exceeds the State COA indicator is highly correlated to whether that State will ultimately receive supplemental Federal assistance for that incident.

FEMA began informally using the per capita indicator in 1986 and set it at $1, based on the 1983 nationwide per capita personal income (PCPI), as $1 was determined to be a reasonable portion of PCPI for a State to contribute towards the cost of a disaster. This amount also correlated closely to about 0.1 percent of established General Fund expenditures by States. With the passage of time, however, the indicator lost its relation to both metrics upon which FEMA first calculated it. When FEMA began using a per capita indicator of $1 in 1986, the most recent PCPI data available was 1983 PCPI, which was $11,687.[32] By 1999, PCPI had risen 145 percent to $28,675.[33] Similarly, the per capita indicator also fell short of keeping pace with State general fund expenditures. Between 1986 and 1999, the national average increase in State general fund expenditures was 146 percent.[34] Despite these increases in PCPI and State general fund expenditures, FEMA did not increase the per capita indicator until 1999.

2. Changes to the Per Capita Indicator and Establishment of the Minimum Threshold

In 1999, FEMA issued a rule to codify the per capita indicator at $1 and establish, beginning in 1999, that FEMA would annually adjust the per capita indicator for inflation based on the Consumer Price Index for All Urban Consumers (CPI–U).[35] This rule, along with the failure to increase the indicator over the years, removed any remaining association the indicator had in the past

[22] *Id.* at § 206.48(a)(3).

[23] *Id.* at § 206.48(a)(4).

[24] *See* 44 CFR 206.48(a)(5).

[25] *Id.* at § 206.48(a)(6).

[26] Public Law 115–254, 132 Stat. 3438 (Oct. 5, 2018).

[27] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[28] Since the drafting of this proposed rule, FEMA has published the FY 2020 per capita indicator of $1.53. However, for the purposes of this proposed rule and analysis, FEMA will continue to discuss the FY 2019 per capita of $1.50. *See* FEMA, Notice of Adjustment of Statewide per Capita Impact Indicator, 83 FR 53279 (Oct. 22, 2018).

[29] *See, e.g.,* 84 FR 55324 (Oct. 16, 2019).

[30] Per Capita Impact Indicator and Project Thresholds are published on FEMA's website, available at *https://www.fema.gov/public-assistance-indicator-and-project-thresholds.*

[31] 82 FR 4064, 4067 (Jan. 12, 2017).

[32] Disaster Assistance; Subpart C, the Declaration Process and State Commitments, 51 FR 13333, Apr. 18, 1986, found at *http://cdn.loc.gov/service/ll/fedreg/fr051/fr051075/fr051075.pdf.* Revisions were made to the BEA 1983 PCPI after publication of the proposed 1986 rule. FEMA used the PCPI of $11,687 to maintain consistency with the data used at the time of establishing the per capita indicator.

[33] Per Capita Personal Income (PCPI) is calculated annually by the United States Department of Commerce's Bureau of Economic Analysis. PCPI data is available for download at *https://apps.bea.gov/regional/downloadzip.cfm:* Download ''Annual Personal Income by State'' under ''State Personal Income Accounts.'' Historical PCPI data pulled from Excel sheet titled ''SAINC1_ALL_AREAS_1929_2018.''

[34] *Compare* National Association of State Budget Officers (NASBO), 1988 State Expenditure Report, *with* NASBO, 2000 State Expenditure Report (available for download at: *https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives*). Actual fiscal total US expenditures were $880,252 million in 1999 (found page 6 of the 2000 report) and $358,277 million in 1986 (found page 5 of the 1988 report). Calculation: (($880,252 − $358,277)/$358,277) * 100 = 145.69 percent (146 percent rounded).

[35] 64 FR 47697 (Sept. 1, 1999).

with PCPI or State general fund expenditures.

In setting the per capita indicator in 1999, FEMA chose not to retroactively account for inflation from 1986–1999.[36] Accordingly, FEMA did not, and to this date has not, accounted for the 51 percent increase in the CPI–U between April of 1986 (when the per capita indicator was first set at $1) and January of 1999 (when FEMA proposed to adjust the per capita indicator for inflation).[37] Consequently, since 1999, the per capita indicator has risen to its FY 2019 value of $1.50, rather than $2.32, which would be the value of the per capita indicator had FEMA accounted for inflation between 1986 and 1999.[38]

Also, in 1999, FEMA established, through regulation, a $1 million minimum threshold for any PA major disaster, regardless of the calculated State COA indicator.[39] FEMA set the threshold at $1 million because it believed that even the lowest population States could reasonably be expected to cover this level of public assistance damage.[40] Importantly, FEMA did not subject the $1 million floor to adjustments for inflation. FEMA has never raised the $1 million threshold.

3. Criticism of the Current Cost of Assistance Estimates Factor

In recent years, the Government Accountability Office (GAO),[41] the Department of Homeland Security Office of Inspector General (DHS OIG),[42] and Congress,[43] have criticized and called for changes to the way FEMA considers the estimated cost of assistance for a disaster. For example, the GAO found that the PA per capita indicator is artificially low because it does not reflect the rise in PCPI since 1986, or 13 years of inflation from 1986 to 1999, resulting in recommendations to the President that do not comprehensively assess a jurisdiction's capability to respond to and recover from a disaster on its own.[44] Similarly, the DHS OIG found that roughly one-third of FEMA-State Preliminary Damage Assessments used to estimate the damage of a given event would not have exceeded the States' COA indicators if the per capita indicator had been indexed to the Consumer Price Index since 1983.[45] Both GAO and the DHS OIG recommended that FEMA develop and implement a methodology that provides a better reflection of current economic conditions and a more comprehensive assessment of a jurisdiction's capability to respond and recover from a disaster without Federal assistance in order to decrease the frequency of disaster declarations and transfer some costs back to State and local jurisdictions.[46] Additionally, GAO and the DHS OIG recommended that FEMA supplement the per capita indicator with more complete data on a jurisdiction's financial resources (*i.e.,* its tax base), such as TTR, in order to obtain a more comprehensive assessment of the jurisdiction's ability to respond to a disaster on its own.[47]

More recently, in section 1239 of the DRRA, Congress directed FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors.[48]

4. Problems With the Current Cost of Assistance Estimates Factor

a. The Current Cost of Assistance Estimates Factor No Longer Provides an Accurate Measure of States' Capabilities To Respond to Disasters and Is No Longer Reflective of Current Economic Conditions

The lack of increases to the per capita indicator from 1986 to 1999 undercut the value of this factor as an indicator of State capacity given the reduction in purchasing power during that time. Similarly, on the minimum threshold, the lack of an increase since 1999 has prevented this factor from keeping pace with inflation, and rising State budgets and resources. For context, the lowest State budget for FY 2018 (Delaware) was just over $4 billion,[49] while its State COA indicator for FY 2018 was just over $1.31 million, or 0.032 percent of the State's budget. For comparison, in FY 1987, Delaware's budget was just under $1 billion,[50] while its State COA indicator was just under $595,000, or 0.063 percent of Delaware's FY 1987 State budget. Similarly, the lowest TTR amongst the States for FY 2016 (Vermont) was $36.1 billion,[51] while that State in FY 2016 was subject to the $1 million minimum threshold, or 0.0028 percent of the State's TTR. Because its State COA indicator was less than $1 million, Vermont would have been subject to the $1 million threshold in FY 2016. For comparison, Vermont's TTR in 1997 was $17.3 billion, while it was subject to the $1 million minimum threshold, or 0.0058 percent of its 1997 TTR. As shown from these figures, the ratio of the per capita indicator and the minimum threshold as a percentage of State budgets and TTR has decreased since FEMA began using the per capita indicator and minimum threshold. Moreover, as discussed in the Regulatory Impact Analysis (RIA) found in the docket of this rulemaking, since 1999, State gross domestic product (GDP), total State expenditures, and State TTR have increased, on a nationwide average, by approximately 113 percent, 131 percent, and 130

[36] In 1998, FEMA considered adjusting the per capita indicator to $1.51 to account for inflation since 1986, but because of input from state emergency management officials, FEMA decided not to do so. *See* GAO, GAO 12–838.

[37] *See* Historical CPI–U, April 2019 (available for download at *https://www.bls.gov/cpi/tables/supplemental-files/home.htm*). CPI–U in April 1986 was 108.6, CPI–U in January 1999 was 164.3. (164.3 − 108.6)/108.6 = 51.23%.

[38] FEMA, Notice of Adjustment of Statewide per Capita Impact Indicator, gave notice that the statewide per capita impact indicator increased to $1.50 for all disasters declared on or after October 1, 2018. 83 FR 53279 (Oct. 22, 2018). FEMA calculated inflation from between 1986 and 1999 by using the CPI–U from April 1986 to August 2018. Calculation: ((August 2018 CPI–U (252.146)—April 1986 CPI–U (108.6))/April 1986 CPI–U (108.6)) + $1 = $2.32 (rounded). FEMA uses the latest available month of CPI–U data to adjust the minimum threshold and per capita indicator each fiscal year, which is generally August CPI–U data. August 2018 CPI–U data was the latest available data when FEMA established the FY2019 per capita indicator and is used in this analysis to maintain consistency with FEMA practice.

[39] 44 CFR 206.48(a)(1).

[40] FEMA, Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration, 64 FR 47697 (Sept. 1, 1999).

[41] *See, e.g.,* GAO, Disaster Assistance: Improvements Needed in Disaster Declaration Criteria and Eligibility Assurance Procedures, GAO 01–837 (2001); See also, GAO, GAO–12–838 at 29.

[42] *See* DHS OIG, OIG–12–79 at 3.

[43] *See, e.g.,* S.1960, Fairness in Federal Disaster Declarations Act of 2014, 113th Cong.; H.R. 3925, Fairness in Federal Disaster Declarations Act of 2014, 113th Cong. (establishing criteria for FEMA to incorporate in rulemaking with specific weighted factors); H.R. 1859, Disaster Declaration Improvement Act of 2013, 113th Cong. (requiring new regulations concerning major disaster declarations).

[44] GAO, GAO–12–838 at 48.

[45] DHS OIG, OIG–12–79 at 7.

[46] GAO, GAO 12–838 at 48–49; *See also* DHS OIG, OIG–12–79 at 7–8.

[47] GAO, GAO 12–838 at 48–49; *See also* DHS OIG, OIG–12–79 at 7–9.

[48] *See* Public Law 115–254, 132 Stat. 3466 (Oct. 5, 2018).

[49] Delaware General Assembly, Section 1, House Substitute No. 1 for House Bill No. 275 of 2017. p. 60. Retrieved 11 June 2018 (available for download at: *http://delcode.delaware.gov/sessionlaws/ga149/chp058.pdf*).

[50] NASBO, The State Expenditure Report, at 59 (July 1987) (available for download at: *https://www.nasbo.org/reports-data/state-expenditure-report/state-expenditure-archives*).

[51] U.S. Dept. of Treasury, 2018 Total Taxable Resources Estimates (Sept. 2018), (available for download at: *https://home.treasury.gov/system/files/226/TTR-tables-2018.pdf*) (last accessed Feb. 19, 2019). 2016 is the most recently reported year for TTR because there is a two-year lag in reporting.

percent, respectively.[52] In comparison, since 1999, the per capita indicator and the minimum threshold have risen 50 percent and 0 percent, respectively.

Consequently, FEMA is relying upon per capita indicator and minimum threshold factors that are no longer adequate measures of a State's capability to respond to and recover from a disaster. The result is a greater likelihood that FEMA recommends major disaster declarations for relatively small incidents that a more accurate assessment would find is within a State's financial capabilities to respond to on its own. This result is counter to the intent of the Stafford Act that Federal assistance be supplemental, and only necessary for disasters that exceed a State's capabilities. In light of the rise in the costs to respond to and recover from a disaster (construction costs in particular), the lack of increases to the per capita indicator has led to outcomes, especially in less populous States, where minor, concentrated infrastructural damage (*e.g.,* a dirt road washout or damage to a single building) would result in costs sufficient to meet the per capita indicator and potentially result in a disaster declaration. While such incidents can certainly be disruptive and expensive, it is questionable whether such minor, concentrated damage really overwhelms a State and warrants a Presidential major disaster declaration.

In sum, the per capita indicator and minimum threshold are not reflective of the change in economic conditions since 1986 and 1999, respectively, and are no longer adequate measures of the States' capabilities to respond to, and recover from, incidents on their own. The increases in State resources and expenditures, and costs, generally, without corresponding increases to the per capita indicator and minimum threshold, has created a situation where Federal assistance is being provided for incidents which are more appropriately addressed by the States. This is counter to the intent of the Stafford Act that Federal assistance be provided only where State and local capabilities are overwhelmed.

b. The Current Cost of Assistance Estimates Factor Undermines FEMA's Mission to Better Prepare the Nation for Disasters by Disincentivizing States From Investing in Disaster Mitigation and Preparedness

The current per capita indicator and minimum threshold act as disincentives for States to invest in disaster response and recovery capabilities for incidents that should be within their capability to respond. Emergency management is a shared responsibility that is most effective when disaster operations are federally supported, State managed, and locally executed, where Federal support supplements, rather than supplants, State and local efforts.[53] In order to build a more prepared and resilient nation, it is essential that State, local, Tribal, and Territorial governments continually mitigate risk to hazards posed by natural disasters, and build their response and recovery capabilities for future incidents, including the creation of dedicated financial reserves to respond to incidents.

While State and local governments respond on their own to countless small incidents that do not reach the level of their current State COA indicator, there is little incentive for States to build their response and recovery capabilities beyond their current State COA indicator, since Federal assistance will be provided at that point, even though FEMA believes all States have financial capabilities beyond their current State COA indicator. For example, in a 2015 study of 10 States, the GAO found that some States reported that they could cover disaster costs without dedicated disaster reserves because they generally relied on the Federal Government to fund most of the costs associated with disaster response and recovery.[54] GAO ultimately concluded, in part, that given the fiscal challenges facing all levels of government, there may be increased pressure to consider whether the current State and Federal approach for providing disaster assistance balances responsibilities appropriately.[55]

The current situation is contrary to two of FEMA's primary objectives when FEMA first formally established the declaration factors in regulation in 1999: To encourage States to establish their own funded disaster assistance programs and to incentivize States to mitigate hazards and obtain insurance coverage, where possible.[56] Moreover, the status quo undermines FEMA's mission to build a more prepared and resilient nation by encouraging States to rely on Federal assistance when they are capable of being better prepared and more resilient on their own.

c. The Current Cost of Assistance Estimates Factor Undermines FEMA's Mission To Prepare for and Respond to the Worst Disasters Without Delay

FEMA's response and recovery operations for numerous and cumulative small disasters weaken its ability to quickly respond to and aid recovery efforts for larger, or concurrent catastrophic disasters. FEMA's incident workforce is historically over-committed to smaller disasters, leaving a fraction of the Agency's capacity to prepare for, respond to, and recover from complex catastrophes and national security emergencies.[57]

The constraints imposed by numerous and cumulative smaller disasters affect the Agency's readiness to support disaster recovery operations without unacceptable delays by consuming FEMA staff time and resources that would be better used for larger disasters. For example, FEMA began the 2017 disaster season with nearly 30 percent of its workforce deployed on numerous smaller disasters across the country, which then required extraordinary and disruptive measures to reallocate and redistribute employees to meet the evolving requirements for hurricanes Harvey, Irma, Maria, and the California Wildfires.[58] When Hurricane Harvey made landfall in Texas, FEMA already had 692 open disaster and emergency declarations.[59] Of that total, it had staff deployed to 32 disasters across 19 field offices.[60] Additionally, in anticipation of concurrent impacts from Hurricane Irma, FEMA transitioned 9 active field offices supporting 13 disasters to regional offices prior to their anticipated closure date. The respective FEMA regional offices assumed responsibility for supporting these operations once the field offices transitioned, requiring FEMA regional staff to aid recovery efforts for these disasters in addition to those disasters already overseen by the Regional offices, as well as the daily operations of the Regional offices.[61] Of the 298 staff that were demobilized from the 9 field offices, FEMA redeployed 182 personnel to Hurricanes Harvey, Irma, and Maria within 15 days, 223

[52] *See* Regulatory Impact Analysis (RIA) at 47. The RIA is available in the public docket for this proposed rule on *regulations.gov*.

[53] FEMA, 2018–2022 Strategic Plan at 8 (2018).

[54] GAO, Budgeting for Disasters: Approaches to Budgeting for Disasters in Selected States, GAO–15–424, at 17 (March 2015).

[55] *Id.* at 21.

[56] *See* FEMA, Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration, 64 FR 47697 (Sept. 1, 1999). *See also,* FEMA, Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration, 64 FR 3910, 3911 (Apr. 26, 1999).

[57] FEMA, 2017 Hurricane Season FEMA After-Action Report, at 23 (July 12, 2018).

[58] *Id.*

[59] This total includes emergency, major, and fire management assistance declarations.

[60] FEMA, 2017 Hurricane Season FEMA After-Action Report, at 14.

[61] *Id.* at 18.

personnel within 30 days, and 242 personnel within 90 days.[62]

FEMA's responsibilities require it to have the capacity to respond in the shortest possible time, under all conditions, and to provide adequate staffing and resources for long-term recovery efforts for FEMA to successfully accomplish its mission. FEMA needs immediate operational availability because complex, no-notice or concurrent catastrophes do not provide time to maximize readiness by amassing a workforce and extracting response resources from multiple smaller-scale commitments. Moreover, FEMA needs proper staffing, resources, and focus for the long-term recovery operations for large disasters so that affected communities can be repaired and rebuilt and return to normal day-to-day life as soon as possible. FEMA is unable to properly meet these demands when such a large portion of FEMA's staffing and focus are committed to numerous and cumulative smaller disasters that are actually, or should be, within the States' capabilities to handle on their own.

As noted in FEMA's After-Action Report for the 2017 Hurricane Season, for FEMA to be better positioned for future challenges, State and territorial governments should be able to respond to and recover from smaller incidents within their capabilities either organically or through collaboration with neighboring states and territories. Strengthened States and territories, in turn, allow FEMA to preserve sufficient capacity to promptly respond to and recover from large, complex, or concurrent catastrophes and national security emergencies.[63] However, as noted above, the current per capita indicator and minimum threshold disincentivize States from building their capabilities to respond to smaller incidents on their own, which undermines FEMA's ability to respond to and recover from large, complex, or concurrent large disasters, and weakens the preparedness and resilience of the Nation. FEMA could be faster and more effective in planning for, responding to, and recovering from large catastrophic disasters if more of its workforce was able to focus on such large disasters, rather than being dispersed to numerous smaller incidents more appropriately handled by the States.

d. FEMA's Use of the Decennial Census as a Data Source for Population

FEMA has exclusively relied upon the U.S. Census Bureau's decennial census reports on population to calculate State COA indicators since the inception of the per capita indicator.[64] The decennial census is a major governmental undertaking that involves canvasing the nation and is considered the most-accurate account of the United States population at the time it is conducted.[65] However, the decennial survey is only conducted every 10 years. Meanwhile, populations constantly fluctuate due to changing circumstances, such as economic growth and downturn, relocations driven by disaster, and other factors. In many cases these fluctuations are rather de minimis, but occasionally they are not. In such instances, as more time elapses after the most recently completed decennial census survey, the data from that decennial survey census becomes a less and less accurate measure of the current populations. Therefore, the Census Bureau uses the Population Estimates Program (PEP) to update the populations since the decennial Census was collected.

Illustrative of how drastically the decennial census data can diverge from the PEP estimates are the cases of Nevada in 2000 and Puerto Rico in 2010, showing the greatest increase and greatest decrease in population in those periods, respectively. The 2000 decennial census reported the population of Nevada to be 1,998,257.[66] The 2001 PEP estimate for Nevada was 2,098,399. By 2009, the PEP estimate had risen to 2,684,665.[67] The 2010 decennial census reported Nevada's population at 2,700,551. Nevada's population grew by 35 percent between 2000 and 2010. Consequently, by 2010, the 2000 decennial census data showed a population for Nevada that was 35 percent lower than its 2010 population. Comparatively, the 2009 Nevada PEP estimate was off by only 0.6 percent from the actual population reported in the 2010 decennial survey. Similarly, the 2010 decennial census reported the population of Puerto Rico to be 3,725,789.[68] However, by July of 2018, the PEP estimate for Puerto Rico fell to 3,195,153, a 14 percent decrease.[69]

Despite the increasing divergence of past decennial data from current populations in out years, FEMA continues to utilize solely decennial data for purposes of calculating the State COA indicators. Under this approach, FEMA essentially locks-in the population of each State until the new decennial census data is collected, analyzed, and reported. In monetary terms, FEMA's choice to rely solely on decennial population values can impact the State COA indicator for a State whose population is quickly changing.

Nevada and Puerto Rico again provide illustrative examples of this effect. In 2009, the PA per capita indicator was $1.31.[70] Based on the 2000 decennial population that FEMA was still utilizing in 2009, Nevada's State COA indicator in 2009 was $2,617,717.[71] Even if FEMA made no changes to the underlying State COA indicator formula other than substituting the 2009 PEP population estimate for the 2000 decennial census population estimate, Nevada's State COA indicator would have risen to $3,516,911.[72] That results in a difference of $899,194. Thus, continuing to utilize the static 2000 decennial census figures in 2009 undervalues Nevada's State COA indicator by 34 percent. With respect to Puerto Rico, based on the 2010 decennial census data that FEMA currently utilizes, Puerto Rico's FY 2019 State COA indicator is $5,588,684.[73] Assuming no changes to the underlying per capita indicator

[62] *Id.*

[63] *Id.* at 23.

[64] The Census Bureau's Population Estimates Program (PEP) produces annual estimates for years after the last published decennial census 2010, as well as for past decades. Existing data series such as births, deaths, Federal tax returns, Medicare enrollment, and immigration, are used to update the decennial census base counts. PEP estimates are used in Federal funding allocations, in setting the levels of national surveys, and in monitoring recent demographic changes. U.S. Census Bureau, Population and Housing Units Estimates: Frequently Asked Questions (available at: *https://www.census.gov/programs-surveys/popest/about/faq.html*) (last accessed April 26, 2019).

[65] Also known as the Population and Housing Census, the Decennial U.S. Census counts every resident in the United States. It is mandated by Article I, Section 2 of the Constitution and takes place every 10 years. The data collected by the decennial census determine the number of seats each state has in the U.S. House of Representatives and is also used to distribute billions in Federal funds to local communities. U.S. Census Bureau, Our Surveys & Programs: Our Censuses (available at *https://www.census.gov/programs-surveys/censuses.html*) (last accessed June 26, 2019).

[66] U.S. Census Bureau, Report No. DP–1, Profiles of General Demographic Characteristics 2000: Census of Population and Housing: Nevada (May 2001) (available for download at: *https://www2.census.gov/library/publications/2001/dec/2kh32.pdf?#*) (last accessed April 26, 2019).

[67] *See* U.S. Census Bureau, Intercensal Estimates of the Resident Population by Sex, Race and Hispanic Origin for States and the United States: April 1, 2000 to July 1, 2010 (available for download at: *https://www.census.gov/data/tables/time-series/demo/popest/intercensal-2000-2010-state.html*) (last accessed April 26, 2019).

[68] *Id.*

[69] U.S. Census Bureau, Puerto Rico Commonwealth Population Totals and Components of change: 2010–2018: Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 2010 to July 2018 (available for download at: *https//www.census.gov/data/tables/time-series/demo/popest/2010s-total-puerto-rico.html*) (last accessed May 2, 2019).

[70] 73 FR 60303 (Oct. 10, 2008).

[71] Calculation: 1,998,257 × $1.31 = $2,617,717.

[72] Calculation: 2,684,665 × $1.31 = $3,516,911.

[73] Calculation: 3,725,789 × $1.50 = $5,588,684.

formula other than substituting 2018 PEP population estimate for the 2010 decennial census population estimate, Puerto Rico's State COA indicator would be $4,792,730,[74] or a difference of $795,954. Thus, continuing to utilize the 2010 decennial census figures in 2019 overvalues Puerto Rico's State COA indicator by 14 percent.

As shown above, FEMA's reliance on population data from the most recent decennial survey can lead to an imprecise assessment of a State's population. Using PEP estimates will provide more up-to-date population information and allow for more accurate analysis.

B. Localized Impacts and Multiple Disasters

In addition to estimating the cost of assistance for a disaster, pursuant to 44 CFR 206.48(a)(1), FEMA also considers a variety of other factors when reviewing a request for a major disaster declaration authorizing PA. While the cost of assistance estimates factor is often the greatest indicator of whether FEMA will recommend that the President issue a major disaster declaration, that factor alone does not automatically mean a denial if the State does not meet it, nor does it guarantee a declaration if the State does meet it.[75] Rather, FEMA considers each factor to better evaluate the unique circumstances or needs created by each incident.[76]

Two of the factors that FEMA considers in reviewing a Governor's request are the recent disasters in an area, and the localized impacts of a disaster.[77] With respect to recent disasters, FEMA considers the disaster history within the last 12-month period to better evaluate the overall impact on the State or locality. FEMA considers declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds. With respect to localized impacts, FEMA considers the impact of the incident at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might overwhelm State capabilities even if the State COA indicator is not met, especially where critical facilities are involved or where localized per capita impacts might be extremely high. For example, at times localized damage may be in the tens or even hundreds of dollars per capita, though the statewide per capita impact was low.

In recent years, some members of Congress have expressed concern that the President has denied declarations that were warranted because of other recent disasters in the area and localized impacts, particularly where the impact is limited to the rural or sparsely populated areas of a high population State and the estimated costs of the incident do not exceed the State COA indicator. Section 1232 of the DRRA requires the Administrator of FEMA to give greater consideration to recent multiple disasters or severe localized impacts when making disaster declaration recommendations to the President, and to make corresponding adjustments to FEMA's policies and regulations regarding such consideration.

The existing recent multiple disasters provision in FEMA's regulations is broad with respect to how much consideration the Administrator gives to disasters in the previous 12 months. Consistent with that provision and with FEMA's May 1 guidance to Regional Administrators, directing them to include in their recommendations appropriate and fulsome information regarding severe local impacts and the history of recent multiple disasters,[78] FEMA is giving greater consideration to these factors when making disaster declaration recommendations. Accordingly, FEMA does not propose to substantively amend 44 CFR 206.48(a)(5), but requests comment on whether the 12-month time limit currently in place is sufficient to address this factor as required by the DRRA. Similarly, FEMA proposes not to substantively amend the current regulatory text for the localized impacts factor in § 206.48(a)(2). FEMA believes that the current regulatory text enables FEMA to provide adequate consideration of local impacts while ensuring that FEMA does not over step the statutory requirement that an event be beyond State capability. FEMA also does not propose at this time to substantively amend the other declaration factors at 44 CFR 206.48(a)(3) (''Insurance coverage in force''), (4) (''Hazard mitigation''), and (6) (''Programs of other Federal assistance''). The current regulatory text for these factors already provides for adequate consideration of important information for FEMA assessment of a State's capabilities to respond to an event, while also providing sufficient flexibility for FEMA to account for a variety of circumstances across the States. However, FEMA is proposing minor technical and grammatical changes to all of § 206.48(a).

IV. Discussion of the Proposed Rule

FEMA proposes to revise the ''Estimated cost of the assistance'' factor in 44 CFR 206.48(a)(1) by increasing the per capita indicator to account for inflation from 1986 to 1999 and adjusting the individual States' indicators by their total taxable resources (TTR),[79] and by increasing the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter. These changes would provide FEMA with a better informed and more accurate assessment of whether an incident has exceeded State capabilities when it makes its recommendations to the President; incentivize States to invest more in response, recovery, and mitigation capabilities, which would provide a better distribution of responsibilities between the States and the Federal Government and better overall national preparedness for disasters; and the associated reductions in declarations of small incidents would allow FEMA to better focus its efforts and resources on large disasters without the complications of reallocating resources from multiple smaller-scale commitments.

Additionally, FEMA also proposes to use the U.S. Census Bureau's annual population estimates produced under the Population Estimates Program (PEP) instead of the decennial census population data. Using the U.S. Census Bureau's annual PEP data instead of the decennial census data would ensure a more accurate assessment of an individual State's population, which would better enable FEMA to achieve its readiness and preparedness missions by allowing FEMA to expend more attention and resources on incidents that actually exceed the States' capabilities.

Importantly, this proposed rule does not affect disaster declaration requests received directly from Tribal governments under the Tribal

[74] Calculation: 3,195,153 × $1.50 = $4,792,730.

[75] 64 FR 47697. *See also* 64 FR 3911.

[76] 64 FR 47697. *See also* 64 FR 3911.

[77] 44 CFR 206.48(a)(2) & (5).

[78] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[79] As discussed more below, FEMA will not adjust the District of Columbia's per capita indicator for TTR because of the unique tax and Federal funding circumstances in the District, as well as Congress' control over the ability of the District to manipulate its own revenues. Additionally, FEMA will not adjust the territories' per capita indicators for TTR because Treasury does not report TTR for the territories.

Declarations Pilot Guidance, or any of the criteria contained in that guidance.[80]

FEMA also proposes minor technical and corresponding grammatical changes to the introductory paragraph of § 206.48 and all of paragraph (a) to ensure consistent language throughout this section.

A. 44 CFR 206.48(a)(1)—Adjusting the Per Capita Indicator

1. Increasing the Per Capita Indicator To Account for Inflation Between 1986 and 1999

FEMA proposes to increase the per capita indicator from a FY 2019 value of $1.50,[81] to $2.32 (rounded), to account for increases to the Consumer Price Index for All Urban Consumers (CPI–U) between 1986 and 1999.[82] FEMA would continue to adjust the per capita indicator annually to reflect changes in the CPI–U, as is current practice. This would establish the baseline per capita indicator which FEMA would further adjust for each State, as described below.

The CPI–U is calculated and published by the U.S. Department of Labor, Bureau of Labor Statistics,[83] and uses the period of 1982 to 1984 as the base level where the CPI–U = 100. Current FEMA practice is to update the per capita indicator each fiscal year using the latest available month of CPI–U data. Since the per capita indicator is reported for the fiscal year and is published each October, the latest available CPI–U data is August data published in September each year. To maintain consistency with how FEMA updates the per capita indicator, FEMA calculated the inflation adjustment by comparing the April CPI–U for the base year 1986 (108.60) with the August CPI–U for 2018 (252.146). At the time of this analysis, August 2018 CPI–U data was the most recently available August CPI–U data available. This resulted in an inflation adjustment factor of 2.322.[84] FEMA then multiplied the inflation adjustment factor of 2.322 by the original per capita indicator of $1.00 to find a base per capita indicator of $2.32 (rounded).

Moving forward, once FEMA increases the indicator for the 1986–1999 inflationary adjustments, the continued practice of adjusting the indicator to account for changes in the CPI–U would continue to ensure that the indicator keeps pace with inflation. This would lead to reductions in the number and frequency of future major disaster declarations, and decreases in Federal costs of disaster assistance, by having States take responsibility for costs that are within their capability to manage.

Much like FEMA's decision in 1999 to set the per capita indicator at $1 and begin adjusting for inflation, rather than PCPI,[85] the current proposed change (to increase the per capita indicator for inflation between 1986 and 1999) provides a simple, clear, consistent, and long standing means of evaluating the size of a disaster relative to the size of the State, while also decreasing the number and frequency of disaster declarations, and decreasing Federal disaster costs. Moreover, increasing the per capita indicator to account for inflation from 1986 to 1999 would be more reflective of current dollar values, and would better enable FEMA to achieve its readiness and preparedness missions because FEMA would be able to apply more attention and resources to large catastrophic incidents as less FEMA focus and resources would be needed for smaller incidents actually within the States' capabilities.

2. Adjusting the Increased Per Capita Indicator for Total Taxable Resources

In addition to increasing the per capita indicator to account for inflation from 1986 to 1999, FEMA proposes to adjust the increased, baseline per capita indicator for a State's TTR to set an indicator that better recognizes a State's actual fiscal capability.

The TTR of the State is a publicly available annual estimate of the relative fiscal capacity of a State, calculated by the U.S. Department of Treasury (Treasury).[86] Treasury defines TTR 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.[87] TTR includes much of the business income that does not become part of the income flow to jurisdiction residents, as well as undistributed corporate profits, and rents and interest payments made by businesses to out-of-jurisdiction real estate owners and lenders.[88] TTR does not consider the actual fiscal choices made by the States, but rather, it reflects their potential resources and is an indicator of a State's broader economy.[89] In summary, TTR is a flow concept, meaning it is a comprehensive measure of all the income flows a State can potentially tax.[90] Treasury bases its calculation of the TTR on the Gross State Product (GSP) and State personal income,[91] accounting for the earnings of State residents who work outside the State borders, dividend and monetary interest income earned from sources outside of the State, select transfers from the Federal Government, and net realized capital gains. The following components of GSP were not available to States to tax and hence subtracted from GSP: Federal indirect business taxes, employer and employee contributions to social insurance, and Federal civilian enterprises surplus/deficit.[92]

Consideration of TTR as an indicator of State fiscal capacity is also consistent with FEMA's recent rulemaking revising the factors considered when evaluating requests for Individual Assistance (IA). The revised regulations for evaluating requests for IA (44 CFR 206.48(b)) use TTR as the main indicator of a State's fiscal capacity to provide IA.[93]

FEMA considered other potential alternatives for adjusting the per capita indicator to better measure a State's financial capabilities, including State GDP (*i.e.,* the total value of the goods and services produced within the State in a particular year); State Total Actual Revenues (TAR) (*i.e.,* the amount of revenue a particular State actually raises in a typical year); and a composite index of per capita TTR, per capita surplus/deficit, per capita reserve funding, and the State's bond rating. State GDP and TAR are strongly correlated with TTR;

[80] FEMA, Tribal Declarations Pilot Guidance, available at: *https://www.fema.gov/tribal-declarations-pilot-guidance.* Notice of availability published at 82 FR 3016 (Jan. 10, 2017).

[81] The FY2019 per capita indicator was the most current per capita indicator at the time that this proposed rule was written.

[82] Using August 1986 and 1999 CPI–U historical data.

[83] BLS Archived Consumer Price Index Supplemental Files (available for download at: *https://www.bls.gov/CPI-U/tables/supplemental-files/home.htm*). Data was taken from the Historical CPI–U, February 2019 publication.

[84] Calculation: $1 + (252.146–108.60)/108.60 = $2.322 (rounded).

[85] *See* 64 FR 47697 (Sept. 1, 1999).

[86] Treasury updates TTR data annually with a 2-year lag in the data, available at *https://home.treasury.gov/policy-issues/economic-policy/total-taxable-resources.*

[87] Dep't of Treasury, Office of Economic Policy, Treasury Methodology for Estimating Total Taxable Resources, at 2 (Revised Nov. 2002) (available for download at: *https://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf*).

[88] *See Id.* at 1–4.

[89] *See Id.* at 2.

[90] *Id.*

[91] *Id.* at 2–3.

[92] *See Id.* at 1–4.

[93] FEMA, Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster, 84 FR 10632 (March 21, 2019). The revised IA regulations also allow States to submit information regarding State GDP and local per capita personal income, as well as other limiting factors, which FEMA may use as an alternative or supplemental evaluation method to TTR from which to measure a State's fiscal capacity to provide IA in response to a disaster. *See* 44 CFR 206.48(b)(1)(i)(A)–(C).

however, TTR, as a measure of potential, does not suffer from complications of political choice in TAR or GDP that result from differences between States in State tax obligations and the services for which tax dollars are allocated. Accordingly, given the correlation between the three, and the policy-neutrality of TTR, FEMA believes that TTR is the best measure of a State's financial capabilities by which to adjust the baseline per capita indicator.

Under the composite index approach, FEMA would average the four fiscal capacity indices and use the final figure to adjust each State's per capita indicator. This type of analysis was previously considered for use in FEMA's Establishing a Deductible for FEMA's Public Assistance Program Supplemental Advance Notice of Proposed Rulemaking (Deductible ANPRM).[94] The Deductible ANPRM was an earlier attempt to address the issue of underestimating States' fiscal capacity when recommending disaster declarations, and the four-part composite index analysis was part of the reason the deductible was eventually rejected. Public comments received on the Deductible ANPRM made clear that State and local stakeholders were uncomfortable with the complexity of the four-factor analysis; although it is more in-depth and could potentially produce more accurate assessments of States' fiscal capacities, the analysis is also a substantially more complicated framework for States and PA sub-recipients to adapt to and plan around. FEMA decided against using it here for these same reasons. FEMA believes adjusting the per capita indicator only by TTR strikes an appropriate balance between improving the fiscal capacity analysis by considering more than simply a State's population, and not burdening States with an overly complicated formula that slows implementation of the new framework.

Based on the above, FEMA believes that adjusting the baseline per capita indicator for TTR would result in a more realistic estimate of a State's financial capability. As previously discussed, adjusting the per capita indicator to adjust for inflation using the CPI–U between 1986 and 1999 would provide a more accurate measurement of the current costs of response and recovery, as well as changing present value of the dollar. Adjusting the indicator based on a State's TTR would provide additional accuracy in gauging a State's fiscal capacity by accounting for taxable resources other than the State's population, such as business income, undistributed corporate profits, and resident earnings from out-of-state employment. This approach also aligns with the recommendations of DHS OIG and GAO, Congress' direction in section 1239 of the DRRA, as well as the Stafford Act and FEMA's Strategic Plan, by ensuring that Federal assistance supplements State and local efforts when State and local capabilities have been exceeded, rather than supplanting resources that a State is financially capable of providing on its own.

Treasury reports TTR in three formats: billions of dollars, dollars per capita, and the per capita index. To adjust for TTR, FEMA would use 1/100th of the TTR per capita index, which is calculated relative to the national average TTR for a given year, where a TTR per capita index of 100 represents the national average. For example, if a State had a TTR per capita index of 101, FEMA would multiply the baseline indicator by 1.01 to adjust (*e.g.,* $2.32 × 1.01 = $2.34). FEMA would use the most recent TTR data available. Using 2018 published data, the minimum per capita indicator adjusted for TTR would be $1.52 (Mississippi, $2.32 × .655 = $1.52) and the maximum per capita indicator adjusted for TTR would be $3.17 (Connecticut, $2.32 × 1.368 = $3.17).[95]

FEMA believes that this method is the clearest and simplest method of utilizing the reported formats of TTR.[96] If FEMA were to use one of the other reported formats of TTR, FEMA would need to set a percentage of State total TTR in billions of dollars or State TTR per capita that would be appropriate for measuring a State's fiscal capability for responding to an incident, or FEMA would need to devise a formula by which to obtain a number that would adjust the baseline per capita indicator. FEMA believes that such changes could be difficult to implement on an annual basis, would be overly complex, and could result in confusion for stakeholders.[97] In contrast, much like the adjustment to the baseline per capita indicator, FEMA believes that the proposed method of adjusting for TTR provides the simplest, clearest, and most workable method by which to adjust the per capita indicator in order to ensure that FEMA accurately measures a State's financial capabilities.

As shown in Table 1, the individual States' per capita indicators would range from $1.51 to $3.15. Every State's per capita indicator would increase due to the adjustment for increases to the CPI–U from 1986 and 1999. However, adjusting for TTR would decrease 29 States' per capita threshold from the base amount, 20 States would see an increase in their per capita indicator threshold, and 7 States would still have a $2.32 adjusted per capita indicator.[98]

FEMA proposes not to adjust the District of Columbia's per capita indicator for TTR. The complex tax and Federal appropriation circumstances in the District of Columbia, as well as Congress' control over the ability of the District to manipulate its own revenues, would require impractical and potentially inaccurate adjustments in the TTR method. For example, Federal law prohibits the District from taxing non-resident commuters. Additionally, evaluating the District of Columbia's TTR is further complicated by the direct Federal oversight and appropriation of the District's budget. Accordingly, TTR does not provide the additional accuracy in determining the District's financial capability as it does for the States. Therefore, FEMA would use the increased per capita indicator to determine the District's per capita threshold, without adjusting for TTR. FEMA specifically requests comment on possible alternatives to this approach that would improve the accuracy of FEMA's fiscal capacity analysis for the District.

Additionally, FEMA is not proposing to adjust the per capita indicator for TTR for the territories because Treasury

[94] 82 FR 4064, 4072 (Jan. 12, 2017).

[95] U.S Dept. of Treasury, 2018 Total Taxable Resources Estimates (2018), *https://home.treasury.gov/system/files/226/TTR-tables-2018.pdf.*

[96] The GAO recommended the same approach to use a fiscal index to adjust the per capita indicator. GAO, GAO 12–838 at 71–72.

[97] Notably, the revisions to the regulations governing requests for IA included the ability for States to submit information on their GDP and local per capita personal income (PCPI) which FEMA may use as a supplemental or alternative factor to TTR when measuring a State's fiscal capacity to provide IA. *See* 44 CFR 206.48(b)(1). While such data may be useful in the IA context, it is less so in the PA context. First, FEMA notes that the use of State GDP and local PCPI are only as potential supplemental or alternative data points for fiscal capacity; TTR is still the preeminent factor for determining fiscal capacity for IA requests. Second, the IA program does not use a per capita indicator like the PA program, nor does it use any adjustment factors such as the proposed rule. Accordingly, if FEMA were to incorporate State GDP and local PCPI, along with TTR, into its consideration of PA requests, it would need to create a formula to adjust the per capita indicator, which would add complexity to the per capita indicator with little benefit given that TTR already incorporates a measure of a State's GDP and personal income. Moreover, States may submit data on their GDP or local PCPI to supplement their request for a PA declaration, since FEMA may consider information in addition to the factors in 44 CFR 206.48(a) to the extent that it further informs FEMA's recommendation to the President.

[98] As noted above, FEMA is not proposing to use TTR data for the territories and DC. South Dakota had a TTR of 100 in 2018.

does not report TTR for the territories.[99] This would result in the territories having the same per capita threshold as the average State, which may in practice be an over-estimation of the territories' fiscal capacity. However, without a published TTR to use, adopting the same approach proposed here for the States simply is not an option. FEMA requests comment on alternative approaches that would improve FEMA's fiscal capacity analysis for the territories. One such alternative, on which FEMA requests comment, would be to adjust the per capita indicator for the territories by the lowest TTR reported for any of the States.

3. Using Annual Population Data To Calculate the States' COA Indicator

FEMA proposes to use the U.S. Census Bureau's annual population estimates produced under PEP instead of the decennial census population data when calculating the State COA indicator. PEP produces annual estimates for years after the last published decennial census, as well as for past decades. The Census Bureau uses existing data series such as births, deaths, Federal tax returns, Medicare enrollment, and immigration to update the decennial census base counts. PEP estimates are used in Federal funding allocations, in setting the levels of national surveys, and in monitoring recent demographic changes.[100] As years pass since the most-recent decennial survey, the PEP estimates bear less relation to the previous numbers and adopt a stronger correlation to the results of the next decennial survey. In other words, as more time elapses between the most recently completed decennial survey and the next decennial survey, the PEP estimates become more current measures of the States' populations than the most recently conducted decennial survey.

Using the annual PEP data instead of data from the most recent decennial census would provide a more contemporaneous measure of a State's population to use in FEMA's calculation of State COA indicators. As shown in the examples of Nevada and Puerto Rico, use of decennial census data can lead to inaccurate assessments of a State's current population. Using the U.S. Census Bureau's annual PEP data instead of the decennial census data would ensure a more current assessment. Using the PEP data would better enable FEMA to achieve its readiness and preparedness missions because FEMA would be able to expend more attention and resources to large catastrophic incidents since less FEMA focus and resources would be needed for smaller incidents within the States' capabilities.

4. State COA Indicators After Accounting for Proposed Changes

The following table shows for each State: (1) The most recent TTR per capita index (2016),[101] (2) the proposed State per capita indicator after adjusting for inflation and TTR, (3) State population from the most recent PEP estimates (2018),[102] (4) the resultant proposed State COA indicators, (5) the FY2019 State COA indicators based on the FY2019 per capita indicator ($1.50) [103] and 2010 decennial census data, and (6) the difference between the proposed and baseline State COA indicators.

TABLE 1—PROPOSED STATE COA INDICATORS

State	2016 TTR (percentage)	Proposed state per capita indicator (2016 TTR * $2.32)	PEP population estimate (2018)	Proposed state COA indicators (A)	FY 2019 state COA indicators—baseline (B)	Difference (A – B)	Percent change
Alabama	73.7	$1.71	4,887,871	$8,358,259	$7,169,604	$1,188,655	16.6
Alaska	110.5	2.56	737,438	1,887,841	1,065,347	822,494	77.2
Arizona	76.6	1.78	7,171,646	12,765,530	9,588,026	3,177,504	33.1
Arkansas	74.2	1.72	3,013,825	5,183,779	4,373,877	809,902	18.5
California	114.2	2.65	39,557,045	104,826,169	55,880,934	48,945,235	87.6
Colorado	102	2.37	5,695,564	13,498,487	7,543,794	5,954,693	78.9
Connecticut	136.8	3.17	3,572,665	11,325,348	5,361,146	5,964,202	111.2
District of Columbia	100	2.32	967,171	2,243,837	902,585	1,341,252	148.6
Delaware	131.7	3.06	702,455	2,149,512	1,346,901	802,611	59.6
Florida	85.4	1.98	21,299,325	42,172,664	28,201,965	13,970,699	49.5
Georgia	87.3	2.03	10,519,475	21,354,534	14,531,480	6,823,054	47.0
Hawaii	99	2.30	1,420,491	3,267,129	2,040,452	1,226,677	60.1
Idaho	74.5	1.73	1,754,208	3,034,780	2,351,373	683,407	29.1
Illinois	108.4	2.51	12,741,080	31,980,111	19,245,948	12,734,163	66.2
Indiana	90.7	2.10	6,691,878	14,052,944	9,725,703	4,327,241	44.5
Iowa	102.5	2.38	3,156,145	7,511,625	4,569,533	2,942,092	64.4
Kansas	96.3	2.23	2,911,505	6,492,656	4,279,677	2,212,979	51.7
Kentucky	76.6	1.78	4,468,402	7,953,756	6,509,051	1,444,705	22.2
Louisiana	85.8	1.99	4,659,978	9,273,356	6,800,058	2,473,298	36.4
Maine	79.6	1.85	1,338,404	2,476,047	1,992,542	483,505	24.3
Maryland	117.2	2.72	6,042,718	16,436,193	8,660,328	7,775,865	89.8
Massachusetts	130.4	3.03	6,902,149	20,913,511	9,821,444	11,092,067	112.9
Michigan	85.6	1.99	9,995,915	19,891,871	14,825,460	5,066,411	34.2
Minnesota	105	2.44	5,611,179	13,691,277	7,955,888	5,735,389	72.1
Mississippi	65.5	1.52	2,986,530	4,539,526	4,450,946	88,580	2.0
Missouri	86.1	2.00	6,126,452	12,252,904	8,983,391	3,269,513	36.4
Montana	80.2	1.86	1,062,305	1,975,887	1,484,123	491,764	33.1
Nebraska	107.1	2.48	1,929,268	4,784,585	2,739,512	2,045,073	74.7

[99] The territories for which Treasury does not report TTR include: American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Puerto Rico and the U.S. Virgin Islands.

[100] U.S. Census Bureau, Population and Housing Units Estimates: Frequently Asked Questions (available at: *https://www.census.gov/programs-surveys/popest/about/faq.html*) (accessed April 26, 2019).

[101] The Treasury Department publishes updated TTR per capita indices two years after the year in question. The most recent data available at the time of this analysis was 2016 data.

[102] PEP estimates are released in July each year covering the previous year and all other years back to the last decennial census. At the time of this analysis, the data for 2018 was the most recent data available.

[103] FEMA publishes updated per capita indicators in the **Federal Register** each year, with FY 2019 being the most recent data available at the time of this analysis. If this proposed change were adopted, FEMA's annual publication in the **Federal Register** would include a list of TTR-adjusted per capita indicators and COA indicators for each State.

TABLE 1—PROPOSED STATE COA INDICATORS—Continued

State	2016 TTR (percentage)	Proposed state per capita indicator (2016 TTR * $2.32)	PEP population estimate (2018)	Proposed state COA indicators (A)	FY 2019 state COA indicators—baseline (B)	Difference (A – B)	Percent change
Nevada	91.9	2.13	3,034,392	6,463,255	4,050,827	2,412,428	59.6
New Hampshire	112.9	2.62	1,356,458	3,553,920	1,974,705	1,579,215	80.0
New Jersey	122.8	2.85	8,908,520	25,389,282	13,187,841	12,201,441	92.5
New Mexico	76	1.76	2,095,428	3,687,953	3,088,769	599,184	19.4
New York	132	3.06	19,542,209	59,799,160	29,067,153	30,732,007	105.7
North Carolina	86.4	2.00	10,383,620	20,767,240	14,303,225	6,464,015	45.2
North Dakota	119.8	2.78	760,077	2,113,014	1,008,887	1,104,127	109.4
Ohio	91.6	2.13	11,689,442	24,898,511	17,304,756	7,593,755	43.9
Oklahoma	80.7	1.87	3,943,079	7,373,558	5,627,027	1,746,531	31.0
Oregon	95.7	2.22	4,190,713	9,303,383	5,746,611	3,556,772	61.9
Pennsylvania	100.4	2.33	12,807,060	29,840,450	19,053,569	10,786,881	56.6
Rhode Island	101.9	2.36	1,057,315	2,495,263	1,578,851	916,412	58.0
South Carolina	75.5	1.75	5,084,127	8,897,222	6,938,046	1,959,176	28.2
South Dakota	100	2.32	882,235	2,046,785	1,221,270	825,515	67.6
Tennessee	84.9	1.97	6,770,010	13,336,920	9,519,158	3,817,762	40.1
Texas	96.6	2.24	28,701,845	64,292,133	37,718,342	26,573,791	70.5
Utah	87.4	2.03	3,161,105	6,417,043	4,145,828	2,271,215	54.8
Vermont *	91.7	2.13	626,299	1,334,017	938,612	395,405	42.1
Virginia	105.1	2.44	8,517,685	20,783,151	12,001,536	8,781,615	73.2
Washington	116	2.69	7,535,591	20,270,740	10,086,810	10,183,930	101.0
West Virginia	72	1.67	1,805,832	3,015,739	2,779,491	236,248	8.5
Wisconsin	95.4	2.21	5,813,568	12,847,985	8,530,479	4,317,506	50.6
Wyoming	117.9	2.74	577,737	1,582,999	845,439	737,560	87.2
Puerto Rico	100	2.32	3,195,153	7,412,755	5,588,684	1,824,071	32.6
American Samoa *	100	2.32	55,519	128,804	83,279	45,525	54.7
Guam *	100	2.32	159,358	369,711	239,037	130,674	54.7
Northern Mariana Islands *	100	2.32	44,943	104,268	67,415	36,853	54.7
Virgin Islands *	100	2.32	106,405	246,860	159,608	87,252	54.7

* These jurisdictions are subject to the current $1 million minimum threshold because the State COA indicator falls beneath the minimum threshold.

B. 44 CFR 206.48(a)(1)—Adjusting the $1 Million Minimum Threshold for Inflation

FEMA proposes to increase the minimum threshold in the cost of assistance estimates factor to account for inflation from 1999, and to adjust the threshold using CPI–U annually hereafter. The proposed rule would increase the current minimum threshold from $1 million to $1.535 million for FY 2019.[104] As noted above, FEMA has never increased the minimum threshold since it established the threshold in 1999, despite a 51 percent increase in the CPI–U and corresponding rises in the costs to respond to incidents, as well as rises in State GDP, expenditures, and TTR. Accordingly, while FEMA believed in 1999 that $1 million was a reasonable amount for even the least populous States and Territories to handle on their own, FEMA believes that the $1 million minimum threshold may no longer be an accurate benchmark of the least populous States' and Territories' capabilities to respond to incidents. Based on the rises in State and Territories' GDP, expenditures, and TTR, FEMA believes that States and Territories should be able to handle the increased minimum threshold.

With the proposed changes to the per capita indicator and the minimum threshold, Vermont, and the territories of the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands would have State COA indicators that would fall below the proposed minimum threshold.[105] Accordingly, these jurisdictions would be subject to the $1.535 million minimum threshold.

Importantly, by accounting for increases to the CPI–U since 1999 and annually moving forward, the minimum threshold would be more representative of current dollar values and be a more accurate indicator of the least populous States' capabilities to respond to incidents. The reduction in disaster declarations would keep FEMA from expending resources and attention on incidents within the States' capabilities, allowing FEMA to better prepare for large, catastrophic incidents. A higher minimum threshold would incentivize less populous States and Territories to build their response and recovery capabilities and mitigate the hazards of future incidents.

In addition to analyzing the effects of increasing the minimum threshold to account for CPI–U from 1999, FEMA analyzed several alternatives to increasing the minimum threshold. The full results of the analysis are presented in the RIA. FEMA analyzed increases since 1999 in State general fund expenditures (which were used as a partial basis for the $1 per capita indicator set in 1986), State TTR, and State GDP, as potential alternatives to the proposed action.

FEMA also analyzed whether its administrative costs for past smaller disasters demonstrated a threshold for which FEMA's administrative burden exceeded the amount of Federal assistance provided. In other words, instances in which FEMA's cost to deliver the assistance may have exceeded the cost of the assistance provided. Administrative costs include

[104] FEMA calculated the inflation adjustment by comparing the January CPI–U for the base year 1999 (164.3) with the August CPI–U for 2018 (252.146). This resulted in an inflation adjustment factor of 1.535. FEMA then multiplied the inflation adjustment factor of 1.535 by the original minimum threshold of $1 million to find a minimum threshold of $1,535,000 (rounded).

[105] As shown in Table 1 above, with the proposed changes to the per capita indicator, Vermont's State COA indicator would be just over $1.30 million. Each of the noted territorial jurisdictions COA indicators fall well below the proposed $1.535 million minimum threshold. Therefore, under this proposed rule, in cases where the estimated cost of assistance meets or exceeds the COA indicators for Vermont or the territorial jurisdictions, but is less than the $1.535 million minimum threshold, the minimum threshold would apply, and the estimated cost of assistance for the State or Territory would have to meet this higher amount. FEMA anticipates that these territorial jurisdictions will generally be subject to the annual minimum threshold year to year due to their small populations.

disaster-related personnel costs such as salaries, benefits, and travel; the cost of tasking another Federal agency to support operations (mission assignments); technical assistance contracts associated with the execution of the PA program; and, general administrative costs such as leases, communications, supplies, and equipment that are incurred from declaration to disaster closure.[106] Given the broad scope of items included in administrative costs, particularly related to personnel, administrative costs are a good representation of the overall Federal resources and attention that are expended on a given disaster.

Based on the analysis of alternatives, FEMA believes that increasing the minimum threshold to account for post-1999 increases to CPI–U is the best alternative for raising the minimum threshold because the other alternatives would increase the complexity of setting the minimum threshold, with few, if any, additional benefits. As explained in the stand-alone RIA found in the docket of this rulemaking,[107] while the other alternatives may result in modest gains in reducing disaster declarations and Federal expenditures, those gains would be outweighed by the complexity that FEMA and stakeholders would encounter in implementing these other alternatives. Importantly, however, in addition to increases in the CPI–U, the increases in State expenditures, GDP, and TTR, and FEMA's average administrative costs for small disasters collectively demonstrate that the current $1 million threshold is no longer an accurate benchmark for the States' capabilities to respond to disasters on their own. Therefore, based on the totality of this information, FEMA believes an increase to the minimum threshold is necessary.

Accordingly, FEMA proposes to amend the minimum threshold to account for increases to the CPI–U from 1999 to present, and annually thereafter. The proposed changes would provide the simplest and most certain means of increasing the minimum threshold, and for annual changes to the threshold. The proposed use of the CPI–U to increase the minimum threshold is also consistent with the adjustments to the per capita indicator. Additionally, adjusting the minimum threshold for changes to the CPI–U would better reflect current dollar values and the States' incident response capabilities, allow FEMA to be better prepared for larger, catastrophic incidents, and incentivize States to build their response capabilities and mitigate hazards posed by future incidents, thereby helping FEMA achieve its mission to make the nation better prepared and more resilient.

C. 44 CFR 206.48(a)(2)–(6)—Other Factors

Section 1232 of the DRRA requires the Administrator of FEMA to give greater consideration to recent multiple disasters or severe localized impacts when making disaster declaration recommendations to the President, and to make corresponding adjustments to FEMA's policies and regulations regarding such consideration. The current text of 44 CFR 206.48(a)(5) provides broad discretion for the consideration of multiple disasters occurring in the 12-month period prior to the event. Consistent with that provision and with FEMA's May 1 guidance to Regional Administrators, directing them to include in their recommendations appropriate and fulsome information regarding severe local impacts and the history of recent multiple disasters,[108] FEMA is giving greater consideration to these factors when making disaster declaration recommendations. Accordingly, FEMA is not proposing to substantively amend § 206.48(a)(5), but requests comment on whether a revision of the 12-month time limit currently in place is necessary to give greater consideration to this factor as required by the DRRA.

Similarly, FEMA proposes not to substantively amend the current regulatory text for the localized impacts factor in § 206.48(a)(2). As noted above, FEMA has instructed Regional staff to give greater consideration to local impacts moving forward [109] and FEMA believes that the current regulatory text provides FEMA sufficient flexibility to provide adequate consideration of local impacts while ensuring that FEMA does not over step the statutory requirement that an event be beyond State capability.[110]

Additionally, with regard to the requirements of section 1239 of the DRRA that FEMA review all of the declaration factors and update them as necessary, FEMA does not propose to substantively amend the other declaration factors at 44 CFR 206.48(a)(3) (''Insurance coverage in force''), (4) (''Hazard mitigation''), and (6) (''Programs of other Federal assistance'') at this time. FEMA believes that the regulatory text for these factors already provides adequate consideration of important information for FEMA's assessment of a State's capabilities to respond to an event, while also providing sufficient flexibility for FEMA to account for a variety of circumstances across the States. Notably, although FEMA is not proposing to substantively amend these factors, FEMA may consider relevant information submitted by a requesting State that is outside the scope of the declaration factors listed in 44 CFR 206.48(a).

D. 44 CFR 206.48—Minor Technical and Grammatical Edits

FEMA also proposes minor technical and corresponding grammatical changes to the undesignated introductory paragraph and to § 206.48(a) to ensure consistent language between the PA declaration factors in 44 CFR 206.48(a) and the IA factors in 44 CFR 206.48(b). FEMA proposes to replace all uses of the term ''we'' in 44 CFR 206.48 with ''FEMA''. This would be consistent with the IA declaration factors in 44 CFR 206.48(b). FEMA also proposes minor corresponding edits to account for the change to the use of ''FEMA'' to ensure proper grammar.

VI. Regulatory Analysis

A. Executive Order 12866, As Amended, Regulatory Planning and Review; Executive Order 13563, Improving Regulation and Regulatory Review; and Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review) 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

[106] Administrative costs do not include program costs associated with mission assignments for Direct Federal Assistance, Urban Search and Rescue costs, and all other program deliverables and assistance such as grants to survivors.

[107] *See* Regulatory Impact Analysis at 47–51.

[108] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[109] Memorandum for Regional Administrators from Jeff Byard, Associate Administrator, Office of Response and Recovery, Declaration Factors for Local Impact and Recent Multiple Disasters (May 1, 2019).

[110] Importantly, the DRRA did not amend section 401 of the Stafford Act which requires that the President determine that an event, to qualify as a major disaster warranting Federal assistance, be beyond the capabilities of the State and the affected local governments. *See* 42 U.S.C. 5170(a). So, while the President must give consideration to the impact of an event on local governments, he must also determine that the event exceeds the capabilities of the State.

equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (Reducing Regulation and Controlling Regulatory Costs) directs agencies to reduce regulation and control regulatory costs and provides that ''for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.''

The Office of Management and Budget (OMB) has designated this rule an ''economically significant regulatory action,'' under section 3(f)(1) of Executive Order 12866. Accordingly, this rule has been reviewed by OMB. This rule is exempt from the requirements of Executive Order 13771 because it has de minimis costs spread across all States and territories. See OMB's Memorandum ''Guidance Implementing Executive Order 13771, Titled 'Reducing Regulation and Controlling Regulatory Costs''' (April 5, 2017).

FEMA conducted a Regulatory Impact Analysis (RIA) to assess the potential costs, benefits, and transfers from this proposed rule, and it has been found to be economically significant under E.O. 12866. FEMA provides an executive summary of the RIA below. For the full analysis, please see the RIA posted in the docket of this proposed rule on *regulations.gov.*

FEMA proposes to amend one of the factors it considers when recommending a major disaster declaration that authorizes PA. Specifically, the proposed rule would update 44 CFR 206.48(a)(1), ''Estimated cost of the assistance.'' FEMA proposes four associated changes in 44 CFR 206.48(a) to conform regulations to Section 1239 of the Disaster Recovery Reform Act of 2018 (DRRA). Table 2 provides a summary of the impacts of the proposed rule. The four proposed changes are:

(1) Increase the per capita indicator from $1.50 to $2.32 to account for inflation using Consumer Price Index for All Urban Consumers (CPI–U) data from 1986 to 1999 because no inflation factor was applied during that time frame. Adjust the per capita indicator by each individual State's total taxable resources (TTR).

(2) Increase the minimum threshold for major disaster declarations that authorize PA from $1 million to $1.535 million to account for inflation since 1999 and to adjust the threshold by CPI–U annually thereafter.[111]

(3) Use the US Census Bureau's annual population estimates produced under the Population Estimates Program (PEP) when calculating the individual State's threshold. FEMA's current practice is to use the decennial census population data when calculating the State COA indicator.

(4) Make minor technical and corresponding grammatical changes to the undesignated introductory paragraph and to paragraph (a) of § 206.48.

TABLE 2—SUMMARY OF THE IMPACTS OF THE PROPOSED RULE (2018$)

Category	Summary
Proposed Changes	Replace the per capita indicator of $1.50 with $2.32 to account for inflation from 1986–1999 and then adjust by State TTR annually. Replace the minimum threshold of $1,000,000 with $1,535,000 and adjust by CPI–U annually. Use PEP annual population estimates instead of decennial census data to calculate the State COA indicators. Technical and grammatical changes to 44 CFR 206.48(a).
Affected Population	Applicants eligible to submit an application for a PA project, include 56 State and Territorial governments, 573 Federally recognized Indian Tribal governments, local governments, and certain private nonprofit organizations (PNPs). From 2008–2017, 7,456 Applicants would have been impacted by the proposed rule.
Transfers	$208.76 million annualized and $1.47 billion and $1.78 billion 10-year monetized reduction in transfers to the Applicants from FEMA at 7 and 3 percent discount rates, respectively.
Cost Savings (due to reduced disaster declaration requests and applications).	$62.71 million annualized and $440.45 million and $534.93 million 10-year monetized FEMA costs savings at 7 and 3 percent discount rates, respectively. $8.04 million annualized; and $56.44 million and $68.55 million 10-year monetized; Applicant cost savings at 7 and 3 percent discount rates, respectively.
Costs (quantitative)	$5,274 and $4,513 annualized; and $37,042 and $38,496 10-year monetized costs to Applicants and FEMA at 7 and 3 percent discount rates, respectively.
Costs (qualitative)	Applicants would need to invest more in response recovery, and mitigation capabilities. Damaged facilities may not be repaired or replaced and could be susceptible to future disasters.
Benefits (quantitative)	No quantitative benefits.
Benefits (qualitative)	Provide FEMA with a more accurate assessment of whether an incident has exceeded an Applicant's capabilities to respond to and recover from an incident. Incentivize Applicants to invest more in response, recovery, and mitigation capabilities, and increase overall national preparedness for incidents. Allow FEMA to refine its focus and resources on large-scale disasters.

[111] January 1999 CPI–U was 164.3 and August 2018 CPI–U was 252.146. Calculation: (252.14 − 164.3)/164.3 + 1 = 1.535 conversation factor (rounded). 1.535 × $1,000,000 = $1,535,000.

Affected Population

The proposed rule would reduce the number of major disaster declarations authorizing PA and therefore affect all non-Federal entities that are eligible to request PA following a Federal major disaster declaration. Eligible applicants for PA include 50 State and 6 Territorial governments, and the District of Columbia as well as 573 Federally recognized Indian Tribal governments,[112] local governments, and certain PNPs. A disaster declaration is done at the State level, but the Applicants fill out the forms for PA eligibility and to receive funding once PA funding is made available through a declaration. For simplicity, FEMA refers to the affected population as Applicants throughout the RIA. If this proposed rule had been in effect from 2008–2017, 7,456 Applicants for 159 PA disasters would have been impacted by the proposed rule. These Applicants would have had a reduction in grant funding, including funding and management costs for PA, funding and management costs for HMGP, and funding and management costs for BRIC. These Applicants would have also had paperwork cost savings for not filling out the forms to determine eligibility and receive funding.

Reduction in Disaster Declarations

As discussed later in this analysis, FEMA used data for the PA disasters from fiscal years (FY) 2008–2017 to estimate how the proposed rule would impact the number of PA disasters and the funding and costs associated with those PA disasters. FEMA used historical data on the estimated impacts on PA disasters from 2008–2017 as a proxy to estimate the impacts over the next ten years after this rule becomes final and effective. FEMA found there were a total of 585 PA disasters over the 10-year period of analysis, an average of 59 disasters per year. FEMA estimates that there likely would be 159 PA disasters that would no longer be declared disasters under the proposed rule, an average of 16 fewer PA disasters declared per year as discussed further in the RIA. This represents a 27 percent reduction in PA disasters declared from 2008–2017 under this proposed rule.

Transfers

Transfer payments are monetary payments from one group to another that do not affect the total resources available to society. Transfers can have significant efficiency effects in addition to distributional effects and are not included in the estimates of the benefits and costs of a regulation. Transfers are analyzed in this RIA because grants, *i.e.* those grants made by FEMA for PA, are considered transfers.

The reduction in PA disasters would result in a reduction in grant funding to the PA Applicants. The reduction in funding from these programs equates to a reduction in transfers from FEMA to the Applicants. FEMA estimates the total 10-year undiscounted transfers of the proposed rulemaking would be $2.09 billion. The total 10-year discounted transfers would be $1.47 billion at a 7 percent discount rate and 1.78 billion at a 3 percent discount rate, with annualized transfers of $208.76 million at both 7 and 3 percent discount rates (Table 3).

TABLE 3—TOTAL ESTIMATED TRANSFERS OF THE PROPOSED RULE

[2018$]

Year	Total undiscounted reduction in transfers from FEMA to applicants	Discounted	
		7%	3%
1	$208,758,700	$195,101,589	$202,678,350
2	208,758,700	182,337,933	196,775,097
3	208,758,700	170,409,284	191,043,783
4	208,758,700	159,261,013	185,479,401
5	208,758,700	148,842,068	180,077,088
6	208,758,700	139,104,736	174,832,125
7	208,758,700	130,004,427	169,739,927
8	208,758,700	121,499,464	164,796,046
9	208,758,700	113,550,901	159,996,161
10	208,758,700	106,122,337	155,336,078
Total	2,087,587,000	1,466,233,752	1,780,754,055
Annualized		208,758,700	208,758,700

Cost Savings

The proposed rulemaking would result in administrative cost savings for FEMA, and paperwork cost savings for the Applicants and FEMA due to a decrease in the number of PA, BRIC, and HMGP applications resulting from fewer disaster declarations. A reduction in declarations would allow FEMA to focus its efforts and resources on larger disasters without the complications of reallocating response resources from multiple smaller scale commitments. The 10-year undiscounted FEMA cost savings resulting from the proposed rule would be $627.10 million ($440.45 million discounted at 7 percent discount rate and $534.92 million at a 3 percent discount rate; $62.71 million annualized at both 7 and 3 percent discount rates). FEMA estimates the 10-year undiscounted Applicant cost savings would be $73.30 million ($51.48 million at 7 percent and $62.53 million at 3 percent; $7.33 million annualized at both 7 and 3 percent). The total 10-year undiscounted cost savings for both FEMA and the Applicants would be $700.40 million, because there would be fewer requests for disasters to be declared and there would be fewer Applicants able to apply for relief. The

[112] As noted above, Tribal governments may directly submit a request for a major disaster declaration to FEMA under the Tribal Declarations Pilot Guidance, instead of requesting assistance through the State. The potential impacts of this proposed rule are discussed in more detail below and in the RIA. *See* Section 13 of the RIA.

10-year total discounted cost savings would be $491.93 million at 7 percent and $597.46 million at 3 percent, with an annualized cost savings of $70.75 million (Table 4).

TABLE 4—TOTAL ESTIMATED COST SAVINGS OF THE PROPOSED RULE

[2018$]

Year	Applicant cost savings	FEMA cost savings	Total undiscounted cost savings	Discounted	
				7%	3%
1	$8,035,714	$62,710,053	$70,745,767	$66,117,539	$68,685,211
2	8,035,714	62,710,053	70,745,767	61,792,093	66,684,671
3	8,035,714	62,710,053	70,745,767	57,749,619	64,742,399
4	8,035,714	62,710,053	70,745,767	53,971,607	62,856,698
5	8,035,714	62,710,053	70,745,767	50,440,754	61,025,920
6	8,035,714	62,710,053	70,745,767	47,140,892	59,248,466
7	8,035,714	62,710,053	70,745,767	44,056,908	57,522,783
8	8,035,714	62,710,053	70,745,767	41,174,681	55,847,362
9	8,035,714	62,710,053	70,745,767	38,481,010	54,220,740
10	8,035,714	62,710,053	70,745,767	35,963,561	52,641,495
Total	80,357,140	627,100,530	707,457,670	496,888,663	603,475,742
Annualized				70,745,767	70,745,767

Costs

The proposed rule would substantively revise the estimated cost of the assistance disaster declaration factor. The proposed rule would not create new factors for FEMA to consider when reviewing a request for a PA disaster. FEMA would not change its current process for updating the per capita indicator or PA damage thresholds. FEMA's current practice is to update the per capita indicator each fiscal year to adjust for inflation using the for CPI–U and post the updated indicator on the **Federal Register** and FEMA website. The proposed rule would also require FEMA to update the minimum threshold every year to adjust for inflation. This is a new practice that FEMA is implementing to more accurately gauge a State's fiscal capacity to respond to disasters, as the threshold has not been updated since it was introduced in 1999. However, FEMA already calculates the change in CPI–U to apply to the per capita indicator each year. FEMA would apply the same change in CPI–U used to update the per capita indicator to the minimum threshold. The proposed rule would require FEMA to adjust the per capita indicator for each State's TTR, which is a new practice. FEMA estimates it would cost $12 per year for a FEMA employee to adjust the per capita indicator by TTR annually.

FEMA would continue to post the updated per capita indicator each fiscal year and would not require any additional annual calculations or data requirements from the Applicants. The proposed rule would impose a one-time cost of $39,545 to the Applicants to familiarize themselves with the proposed changes the first year (Table 5). The minimum threshold would now be published yearly along with the per capita indicator. Because Applicants already look up the per capita indicator, FEMA does not expect additional costs associated with also looking up the minimum threshold. The proposed changes could impose qualitative costs that FEMA was unable to quantify. Qualitative costs are discussed in the RIA. Transferring the costs of PA disasters to Applicants would require the Applicants to invest more in response, recovery, and mitigation capabilities. It is possible that without Federal assistance, Applicants may opt to not repair damaged facilities or pay for other recovery efforts. Damaged facilities that are not repaired or replaced could be more susceptible to subsequent incidents in the future. Additionally, damaged facilities that are not repaired or replaced may no longer be used, which could be a significant loss of infrastructure to small governments who might opt to not repair damaged facilities due to fiscal limitations.

TABLE 5—TOTAL ESTIMATED COSTS OF THE PROPOSED RULE

[2018$]

Year	Applicant costs	FEMA costs	Total undiscounted costs	Discounted	
				7%	3%
1	$39,545	$12	$39,557	$36,969	$38,405
2	0	12	12	10	11
3	0	12	12	10	11
4	0	12	12	9	11
5	0	12	12	9	10
6	0	12	12	8	10
7	0	12	12	7	10
8	0	12	12	7	9
9	0	12	12	7	9
10	0	12	12	6	9
Total	39,545	120	39,665	37,042	38,496

TABLE 5—TOTAL ESTIMATED COSTS OF THE PROPOSED RULE—Continued

[2018$]

Year	Applicant costs	FEMA costs	Total undiscounted costs	Discounted	
				7%	3%
Annualized				5,274	4,513

Benefits

FEMA was unable to quantify benefits of the proposed regulatory changes due to a lack of data on future impacts of adjusting declaration factors. FEMA instead focused on proposed regulatory changes that would provide FEMA with a more accurate assessment of whether an incident has exceeded an Applicant's capabilities to respond to and recover from an incident. This is because the minimum threshold and per capita indicator have not consistently been updated to account for inflation, and not based on a State's fiscal capacity to respond. The proposed changes would ensure that these factors are taken into account. FEMA believes that the proposed changes also would incentivize Applicants to invest more in response, recovery, and mitigation capabilities, since Federal assistance would be focused on larger-scale disasters, and Applicants will have more responsibility to ensure they are adequately equipped to handle smaller disasters. This would provide a better distribution of responsibilities between the Applicants and the Federal Government. These incentives would increase overall national preparedness for incidents. In addition, FEMA believes these changes to the PA declaration factors would result in a reduction in the number of declarations for smaller incidents, allowing FEMA to refine its focus and resources on larger incidents without the complications of reallocating response resources from multiple smaller-scale commitments, that States and local governments would have the capacity to manage without Federal assistance. FEMA requests public comment on the ability of Applicants to invest more in response, recovery, and mitigation capabilities.

Summary

Table 6 provides a summary of the annual and total quantified costs, cost savings, and reduction in transfers by category after implementation of the proposed rule, and Table 7 provides the A–4 accounting summary.

TABLE 6—SUMMARY OF TRANSFERS AND COST SAVINGS OF THE PROPOSED RULE

Transfer, cost, or cost savings item	Annual undiscounted
Reduction in Transfers	
PA Funding	$144,534,939
HMGP Funding	33,330,171
BRIC Funding	7,267,390
PA Management Cost Funding	17,344,193
HMGP Management Cost Funding	4,999,526
BRIC Management Cost Funding	1,282,481
Total Reduction in Transfers	208,758,700
Cost Savings	
Applicant Paperwork Cost Savings	8,035,714
FEMA Administrative Cost Savings	62,409,381
FEMA Paperwork Cost Savings	300,672
Total FEMA Cost Savings	62,710,053
Total Cost Savings (Applicants and FEMA)	70,745,767
Costs	
Applicant Costs.	
Year 1	39,545
Years 2–10	0
FEMA Costs	12
Total Costs, Year 1	39,557
Total Costs, Years 2–10	12

TABLE 7 A–4 ACCOUNTING STATEMENT

[$2018]

Period of Analysis: 2008 to 2017			
Category	7 percent discount rate	3 percent discount rate	Source citation (RIA, preamble, etc.)
BENEFITS:			
Annualized Quantified	N/A	N/A	
Qualitative	• Provide FEMA with a more accurate assessment of whether an incident exceeds Applicant capabilities. • Allow FEMA to focus efforts and resources on larger incidents. • Provide better distribution of responsibilities between Applicants and the Federal Government.		RIA Section 12.
COSTS:			
Annualized Monetized $millions/year	0.005274	0.004513	RIA Section 8.
Annualized quantified	N/A	N/A	
Qualitative	• Applicants would need to invest more in response, recovery, and mitigation capabilities. • Damaged facilities may not be repaired or replaced, and could be susceptible to future disasters.		
COST SAVINGS:			
Annualized Monetized $millions/year	70.75	70.75	RIA Section 8.
TRANSFERS:			
Annualized Monetized $millions/year	208.76	208.76	RIA Section 9.
From/To	Reduction in transfers from FEMA to PA Applicants		RIA Section 9.
Category	Effects		Source citation (RIA, preamble, etc.)
State, Local, and/or Tribal Government	Included in the Cost Savings is $5.88 million annual paperwork cost savings to Applicants. Included in the Transfers is $8.48 million in PA funding that Tribal Applicants would not have received from 2008–20187. However, $7.11 of that funding would have potentially been available for Tribal governments had that requested a disaster declaration under the Tribal Declarations Pilot Guidance.		RIA.
Small business	There were 7,456 unique Applicants for the 159 removed PA disasters from 2008–2017. Using a sample size of 380, FEMA found that 79% were likely to be small entities (5,890 Applicants). The average PA funding received per small entity in the sample was $168,046, with a range from a low of $0 to a high of $20.65 million. If the changes in the proposed rule were in effect, these entities would not have received this PA funding.		RFA (IRFA).
Wages	None.		
Growth	None.		

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agency review of proposed and final rules to assess their impact on small entities. When an agency promulgates a notice of proposed rulemaking under 5 U.S.C. 553, the agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies pursuant to 5 U.S.C. 605(b) that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. However, FEMA is publishing this IRFA to aid the public in commenting on the potential small entity impacts of the proposed requirements in this NPRM. FEMA invites all interested parties to submit data and information regarding the potential direct economic impacts on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process.

In accordance with 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 prepared this IRFA to examine the impacts of the proposed rule on small entities. A small entity may be: A small independent business, defined as independently owned and operated, is organized for profit, and is not dominant in its field per the Small Business Act (5 U.S.C. 632); a small not-for-profit organization (any not-for-profit enterprise which is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (locality with fewer than 50,000 people) per 5 U.S.C. 601–612.

FEMA has discussed most of these issues in other sections of the NPRM and in the stand-alone RIA found in the docket of this rulemaking. In this section, FEMA will address the issues specific to the analysis of small entities that have not been addressed elsewhere.

1. *A description of the reasons why action by the agency is being considered.*

FEMA is proposing to amend the estimated cost of the assistance factor, including the minimum threshold, in 44 CFR 206.48. Pursuant to 44 CFR 206.48, FEMA considers several factors when determining whether to recommend that the President declare a major disaster authorizing the PA program. Since 1986, FEMA has evaluated the estimated cost of Federal and non-Federal public assistance against the statewide population and used a per capita dollar amount (set at $1 in 1986) as an indicator that a disaster may warrant Federal assistance. FEMA did not increase the indicator until 1999, when it began adjusting for inflation in 1999 and annually thereafter. Also, in 1999, FEMA established a $1 million minimum threshold, meaning it would not recommend that the President authorize the PA program unless there was at least $1 million in PA damage, which FEMA believed was a level of damage even the least populous States could handle with their own resources. FEMA has never increased this threshold. The current per capita indicator and minimum threshold do not provide an accurate measure of States' capabilities to respond to disasters. The lack of increases to the per capita indicator from 1986 to 1999 undercut the value of this factor as an indicator of State capacity given the inflation increases during that time. With respect to the minimum threshold, a 1999 determination by FEMA that all States could handle at least $1.0 million in damages with their own resources is outdated given the 53.5 percent increase from 1999 in the inflation rate over the last 20 years and rising State budgets and expenditures.[113]

Additionally, FEMA proposes to use the U.S. Census Bureau's annual population estimates produced under the PEP instead of the decennial census population data when calculating the State COA indicators. These changes would ensure a more accurate assessment of an individual State's financial capability to respond to and recover from a disaster, which would better enable FEMA to achieve its readiness and preparedness missions by allowing FEMA to expend more attention and resources on disasters that exceed the States' capabilities.

2. *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

Section 1239 of DRRA directs FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors. FEMA proposes to amend 44 CFR 206.48(a) to make changes to the estimated cost of assistance factor.

FEMA is proposing to revise the cost of assistance estimates factor in 44 CFR 206.48(a)(1) by increasing the per capita indicator to account for inflation from 1986 to 1999 and adjusting the individual States' indicators by their TTR, and by increasing the minimum threshold by accounting for inflation from 1999 to 2019, and annually thereafter. FEMA also proposes to use the U.S. Census Bureau's annual population estimates produced under PEP instead of the decennial census population data. These changes would provide FEMA with a better informed and more accurate assessment of whether an incident has exceeded State capabilities when it makes its recommendations to the President; incentivize States to invest more in response, recovery, and mitigation capabilities, which would provide a better distribution of responsibilities between the States and the Federal Government and better overall national preparedness for disasters; and the associated reductions in declarations of smaller incidents would allow FEMA to better focus its efforts and resources on large disasters without the complications of reallocating resources from multiple smaller-scale commitments.

3. *A description of and, where feasible, an estimate of the number of small entities to which the rule will apply.*

The proposed rule directly affects all Applicants that are eligible to request PA under a Federal major disaster declaration authorizing PA. Eligible Applicants for PA include: State and Territorial governments, including the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands; federally recognized Indian Tribal Governments, including Alaska Native villages and organizations; local governments; and certain private nonprofits.[114]

FEMA reviewed the PA disasters that it identified that likely would not have been declared from 2008–2017 due to the proposed rule, as presented in Table 8–1 in Section 8 of the stand-alone RIA found in the docket of this rulemaking, to estimate the number of small entities to which the proposed rule would apply. For each of the 159 PA disasters removed, FEMA used PA data in FEMA's Enterprise Data Warehouse (EDW) database to identify the Applicants for each of the PA disasters.

[113] January 1999 CPI–U of 164.3 and August 2018 CPI–U of 252.146. Calculation: (252.146 − 164.3)/164.3 = 53.5% (rounded).

[114] To be an eligible private nonprofit applicant, the private nonprofit must show that it has: A current ruling letter from the U.S. Internal Revenue Service granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or documentation from the State substantiating it is a non-revenue producing, nonprofit entity organized or doing business under State law. Additionally, prior to determining whether the private nonprofit is eligible, FEMA must first determine whether the private nonprofit owns or operates an eligible facility.

FEMA found there were 7,456 unique Applicants for the 158 PA disasters.

FEMA selected a random sample of 383 Applicants from the 7,456 unique Applicants to estimate the percentage that are small entities.[115] The term ''small entities'' includes small businesses that meet the Small Business Administration (SBA) size standard for small business concerns at 13 CFR 121.201, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with population of less than 50,000. FEMA researched and found data and information on 383 randomly sampled Applicants. FEMA found that of the 383 Applicants, 25 were classified as State governments, 312 were local governments, 3 were Tribal governments, and 43 were nonprofits. FEMA removed the 3 Tribal governments from the sample as they are sovereign entities and are not covered by the RFA. State governments are not considered small entities because they have populations greater than 50,000. For the Applicants classified as local governments, FEMA used 2010 decennial Census Bureau population data to determine the Applicant population size. Of the 312 local governments, 259 (or 83 percent) had populations below 50,000 and would be considered as small entities. For nonprofit Applicants, FEMA reviewed the nonprofit's website utilizing an open source database (*Manta.com*) and any other publicly available information to determine the size of the nonprofit and ownership. FEMA researched the 43 private nonprofits and found that all of them were independently owned and operated and are not dominant in their field. Therefore, FEMA assumed all 43 private nonprofits were likely to be small entities. Table 8 summarizes the findings of the small entity threshold analysis.

TABLE 8—SUMMARY OF APPLICANTS IN SAMPLE

Type of recipient or subrecipient	Exceed small entity threshold	Below small entity threshold	Total
State Government	25	0	25
Local Government	53	259	312
Private Nonprofits	0	43	43
Total	78	302	380
Percentage	21%	79%	100%

Of the 380 Applicants, FEMA found that 302 entities were small as defined by the SBA thresholds. Therefore, FEMA estimates that 79% of the total 7,456 Applicants of PA were small entities (5,890 Applicants were small entities). The 302 sampled small entities received a total of $50.75 million in PA funding for the disasters removed from 2008–2017 according to FEMA's EDW database. If the changes in the proposed rule were in effect, these entities would not have received this PA funding. The average PA funding received per small entity in the sample was $168,046 over the 10-year period. The PA funding a small entity received ranged from a low of $0 to a high of $20.65 million. Of the 302 small entities, 4 received $0 in PA funding. FEMA welcomes any data or comments from the public on the number of small entities that may be impacted by this proposed rule an any impacts to those small entities.

4. *A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The proposed rule would call for a revision of a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This proposed rule would call for amendments to the existing collection requirements previously approved under the collections of information (COI) with OMB Control Numbers 1660–0009 and 1660–0017.[116] The costs associated with COI 1660–0009 include the time and cost burden for an Applicant to request a disaster declaration. A request for a disaster declaration comes from the State level. There is no burden for small entities included in COI 1660–0009, as the burden to complete FEMA form 010–0–13 is completed by the equivalent of a State Government Chief Executive and a State Administrative Support Worker. Therefore, there is no paperwork burden impact to small entities for COI 1660–0009.

The costs associated with COI 1660–0017 include the time and cost burden for Applicants to provide FEMA information that is required for PA program eligibility determinations, grants management, and compliance with other Federal laws and regulations. For the 159 PA disasters removed from 2008–2017 from this proposed rule, there would be a reduction in paperwork burden for Applicants that applied for the PA program, as covered by COI 1660–0017. There would be a reduction in respondents for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, and 009–0–141. The number of respondents would not change for FEMA Form 009–0–111, State Administrative Plan and State Plan Amendments (no form), Request for Appeals and Recommendation (no form), and Requests for Arbitration and Recommendation resulting from Hurricanes Katrina or Rita (no form), as these forms are not impacted by the proposed rule.

The burden per response varies by form (see Table 9 in Section E, Paperwork Reduction Act of 1995). The number of forms each Applicant fills out varies by Applicant and by disaster. If an Applicant fills out every form impacted by this proposed rule, the maximum burden per Applicant is 11.4

[115] FEMA used Slovin's formula to determine the sample size. Using a 95 percent confidence interval, a sample size of 380 recipients and subrecipients is sufficient. Slovin's formula = N/(1+Ne^2) = 7,456/(1 + 7,456 * (0.05^2)) = 379.633, rounded up to 380.

[116] ''Public Assistance Program'', 1660–0017 can be found at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-1660-001*. The most recently approved ICR at the time of this analysis was ICR Reference Number 201902–1660–001. ''The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments'', 1660–0009 can be found at *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201905-1660-003*. The most recently approved ICR at the time of this analysis was ICR Reference Number 201905–1660–003.

hours (found using the ''Average Hourly Burden'' column in Table 9, excluding those forms or items not impacted by the proposed rule). Therefore, small entities would have a maximum reduction of 11.4 hours of paperwork burden for each PA disaster removed due to the proposed rule. FEMA previously estimated that 79% of the total 7,456 Applicants of PA for the 159 removed PA disasters were small entities (5,890 Applicants were small entities). If all 5,890 small entity Applicants had filled out every form impacted by the proposed rule, there would have been a reduction in paperwork burden of 67,146 hours (5,890 small entities × 11.4 hours) from 2008–2017. There are no additional reporting, recordkeeping, or other compliance requirements resulting from this proposed rule.

5. *An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.*

There are no relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

6. *A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.*

FEMA considered several alternatives to the proposed changes to the per capita indicator and the minimum threshold. The alternatives are described in more detail in Section 15 of the stand-alone RIA found in the docket of this rulemaking. Because PA is approved at the State level, this proposed rule would only directly affect States. Small entities would be indirectly affected by a reduction in declared disasters at the State level, but FEMA is unable to address the impacts to small entities directly. A summary of those alternatives follows.

FEMA considered two alternatives to adjusting the per capita indicator: adjusting the per capita indicator by PCPI and adjusting the per capita indicator by PCPI and then adjusting by TTR. The preliminary estimate for 2018 US PCPI is $53,712.[117] FEMA established the per capita indicator at $1 in 1986 based on the 1983 US PCPI, which was the latest available published information at the time. The PCPI used to set the original per capita indicator was $11,687.[118] PCPI increased by 360 percent from 1983 to 2018 (($53,712–$11,687)/$11,687). FEMA used the PCPI estimate of $11,687 from the 1986 proposed rulemaking as this was the data FEMA used to set the original per capita indicator. Applying the increase in PCPI to the original per capita indicator of $1 would result in a per capita indicator of $4.60. The per capita indicator alternatives resulted in per capita indicators that were higher than the proposed changes, which would result in more PA disasters that would not have exceeded the proposed thresholds from 2008–2017. Fewer PA disasters would result in more small entities impacted by the proposed rule, since fewer declared disasters would lead to a reduction in Public Assistance provided to local governments and Private Non-Profits within each State. FEMA rejected the PCPI-based per capita indicator thresholds because FEMA believed the resulting per capita indicators may be too high for some States to meet. Moreover, the potentially large changes to PCPI from year to year, in comparison to changes to the CPI–U, could result in instability and uncertainty in what the per capita indicator may be each year for individual States and make it more difficult for States to plan.

FEMA considered four alternatives to adjusting the minimum threshold using CPI–U: Using the change in GDP, State expenditures, or TTR to adjust the minimum threshold, or using FEMA administrative costs to calculate a minimum threshold for which FEMA's administrative burden exceeded the amount of Federal assistance provided. The minimum threshold alternatives resulted in minimum thresholds that were higher than the proposed minimum threshold and would have led to a 1 percent increase in the PA disasters that would not have exceeded the thresholds. Fewer PA disasters could result in more small entities impacted by the proposed rule. FEMA rejected adjusting the minimum threshold using the change in GDP, State expenditures, or TTR because the alternatives increase the complexity of calculating the threshold, but have little additional impact on the reduction in total PA disasters.

FEMA rejected using administrative costs to calculate a minimum threshold because FEMA was unable to derive a specific dollar value of estimated PA obligations at which the proportion of administrative costs relative to PA obligations could justify that a prospective minimum threshold be set at that amount. Based on FEMA's analysis of available information across all PA disasters in the past ten years, there is no specific size of PA disaster at which point administrative costs exceed the amount of PA assistance, or where excessive administrative costs essentially renders such PA assistance ineffectual from a Federal cost standpoint.

FEMA considered the following two alternatives that would have a smaller impact on small entities.

(a) No Regulatory Action

FEMA considered not proposing the minimum threshold and per capita indicator regulatory changes in this proposed rule. FEMA rejected this alternative because section 1239 of the DRRA directs FEMA to review the factors it considers when evaluating a request for a major disaster declaration, specifically the estimated cost of assistance factor, and to initiate rulemaking to update the declaration factors. Additionally, the lack of increases to the per capita indicator from 1986 to 1999 undercuts the value of this factor as an indicator of State capacity given the increases in inflation during that time. For the minimum threshold, the lack of an increase since 1999 has prevented this factor from keeping pace with inflation, and rising State budgets and resources. By not proposing the per capita indicator and minimum threshold regulatory changes in the proposed rule, FEMA would be relying upon per capita indicator and minimum threshold factors that are no longer adequate measures of a State's capability to respond to and recover from a disaster. The no regulatory action alternative would result in a greater likelihood that the President declares major disaster declarations for relatively small incidents that a more accurate assessment would find is within a State's financial capabilities to respond to on its own.

(b) Population Alternative

FEMA considered continuing to use the US Census Bureau's decennial census population estimates instead of the proposed PEP annual estimates. FEMA found that using the decennial populations instead of the PEP annual estimates would have resulted in a reduction of 148 PA disasters from

[117] State Annual Personal Income, 2018 (Preliminary) and State Quarterly Personal Income, 4th Quarter 2018, Table 1: Personal Income, Population, and Per Capita Personal Income, by State and Region, 2017–2018, *https://www.bea.gov/system/files/2019-03/spi0319.pdf.*

[118] Disaster Assistance; Subpart C, the Declaration Process and State Commitments, 51 FR 13333, Apr. 18, 1986, found at *http://cdn.loc.gov/service/ll/fedreg/fr051/fr051075/fr051075.pdf.* FEMA began using $1 per capita informally in 1986. Revisions were made to the BEA 1983 PCPI after publication of the proposed 1986 rule. FEMA used the PCPI of $11,687 to maintain consistency with the data used at the time of establishing the per capita indicator.

2008–2017, an average of 15 per year. This is a difference of 10 disasters from when FEMA used the proposed PEP annual populations in the analysis. This difference was a result of the States having a higher population with the PEP annual population estimates compared to the decennial population, and therefore a higher State COA indicator.

FEMA rejected this alternative because FEMA's reliance on population data from the most recent decennial survey can lead to an imprecise assessment of a State's capabilities to respond to and recover from a disaster on its own. Decennial population data can lead to an inaccurate per capita indicator for States experiencing rapid changes in population. This could result in a greater likelihood that the President declares major disaster declarations for relatively small incidents that are within a State's financial capabilities to respond to on its own after it has experienced rapid population growth, or, conversely, a likelihood that the President does not declare major disaster declarations for incidents that may actually exceed a State's capabilities to respond to on its own where that State's population has rapidly decreased.

More detailed information on the alternatives can be found in Section 15 of the stand-alone RIA found in the docket of this rulemaking.

7. Conclusion

FEMA is interested in the potential impacts of the proposed rule on small entities and requests public comment on these potential impacts. If you think that this rule will have a significant economic impact on you, your business, or your organization, please submit a comment to the docket at the address under **ADDRESSES** in the rule. In your comment, explain why, how, and to what degree you think this rule will have an economic impact on you. FEMA is also interested in less burdensome alternatives for small entities. If you know of less burdensome alternatives, please include them in your comment.

C. Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. 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 of 1969 (NEPA)

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. 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.

Rulemaking is a major Federal action subject to NEPA. Categorical exclusion A3 included in the list of exclusion categories at Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, Appendix A, issued November 6, 2014, covers the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, and advisory circulars if they meet certain criteria provided in A3(a–f). This proposed rule amends an existing regulation without changing its environmental effect, which meets Categorical Exclusion A3(d). This proposed rule is a narrowly crafted revision to FEMA's existing regulations updating the criteria that FEMA considers when recommending an area eligible for PA under a major disaster declaration. The proposed rule is not part of any larger regulatory action. Further, there are no extraordinary circumstances present that would create the potential for a significant environmental impact. Therefore, each of the conditions for application of categorical exclusion A3(d) is satisfied, and this action is categorically excluded from further NEPA review.

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. *See* Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, section (V)(B)(2).

E. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. *See* 44 U.S.C. 3506, 3507. This rulemaking contains a collection of information, as defined by the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501–3520. This action contains proposed amendments to the existing information collection requirements previously approved under OMB Control Number 1660–0009 and 1660–0017. As required by the Paperwork Reduction Act of 1995, FEMA has submitted these proposed collection amendments to OMB for its review.

Collection of Information Number 1660–0009

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

OMB Control Number: 1660–0009.

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

Form Numbers: FEMA Forms 010–0–13 and 009–0–140 (used by FEMA personnel or contractors only).

Summary of the Collection of Information: 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 using FEMA Form 010–0–13. The information obtained by joint Federal, State, and local preliminary damage assessments is 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 and a copy of the Governor's request to the President. 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.

Need for Information: The Stafford Act requires that all requests for a major disaster or emergency declaration be made by the Governor of the affected State or the Chief Executive of an affected Indian tribal government. Section 401(a) of the Stafford Act stipulates that such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local government, and that Federal assistance is necessary. Section 401(a) further stipulates that as a part of such request, and as a prerequisite to major disaster assistance under the Stafford Act, the Governor shall take appropriate response action under State law and direct the execution of the State's emergency plan and shall furnish specific information that must be included in a request for a major disaster declaration. Section 401(a) stipulates that the request must include specific information on the nature and amount of State and local resources which have been or will be committed to alleviate the results of the disaster. Section 501(a) requires the same information to be provided in requests for declarations of an emergency.

Use of Information: This collection includes FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency, which asks for the same data that were stated and required in the previous narrative Governor's requests to the President requesting supplemental Federal assistance, through the appropriate Regional Administrator, combined with the findings of a joint FEMA, State and local Preliminary Damage Assessment (PDA). The PDA is analyzed and provides the basis for a Regional Summary, Analysis, and Recommendation, which is submitted to the Assistant Administrator of the Disaster Assistance Directorate. The information is reviewed and evaluated, and the Administrator formulates a recommendation which is submitted to the President for consideration of a disaster or emergency declaration. The FEMA form eliminates the need for follow-up communications and reporting during a declaration request.

Description of the Respondents: State, local, or Tribal government.

Number of Respondents: The current OMB-approved number of respondents is 623 per year. The proposed rulemaking would not impact the number of respondents.

Number of Responses: FEMA estimates the number of responses would be 340 per year. This is a decrease of 16 responses from the OMB-approved number of responses of 356 per year.

Burden of Response: For each response, FEMA estimates it takes 9 hours to complete FEMA Form 010–0–13. In addition, FEMA estimates it takes 24.126 hours to gather information for the FEMA Form 010–0–13. The total burden for each response is 33.126 hours

Estimate of Total Annual Burden: The previously approved total annual burden was 11,792.8 hours. FEMA estimates that the number of responses would decrease by 16 per year. At 33.126 hours per response, the reduced burden for submitting the responses would be 530 hours (rounded). Based on the proposed rule's decrease in burden, the new estimated total annual burden is 11,262.8 hours.

Collection of Information Number 1660–0017

Title: Public Assistance Program,

OMB Control Number: 1660–0017,

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

Form Numbers: FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–111, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, 055–0–0–1, and 009–0–141.

Summary of the Collection of Information: The Stafford Act authorizes grants to assist State, tribal, and local governments and certain Private Non-Profit entities with the response to and recovery from disasters following Presidentially declared major disasters and emergencies.

Need for Information: The information collected is required for the PA program eligibility determinations, grants management, and compliance with other Federal laws and regulations. Title 44 CFR part 206 specifies the information collections necessary to facilitate the provision of assistance under the PA program.

Use of Information: The information collected is utilized by FEMA to make determinations for PA grants based on the information supplied by the respondents.

Description of Respondents: State, local, or tribal government.

Number of Respondents: The current OMB-approved number of respondents is 56 per year for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–111, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, 009–0–141, State Administrative Plan and State Plan Amendments (no form), and Request for Appeals and Recommendation (no form); and 4 per year for Requests for Arbitration and Recommendation resulting from Hurricanes Katrina or Rita (no form). FEMA estimates the number of respondents would be 40 per year, a decrease of 16 respondents from the OMB-approved number of responses of 56 per year, for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, and 009–0–141. The number of respondents would not change for FEMA Form 009–0–111, State Administrative Plan and State Plan Amendments (no form), Request for Appeals and Recommendation (no form), and Requests for Arbitration and Recommendation resulting from Hurricanes Katrina or Rita (no form).

Number of Responses: The number of responses per respondent varies by form (see Table 9). The number of responses per respondent (form) would not change due to the proposed rule. The decrease in the number of respondents for certain forms would result in a decrease in the total annual responses. FEMA estimates the total annual number of responses would be 284,564 per year. This is a decrease of 113,504 responses from the OMB-approved number of responses of 398,068 per year.

TABLE 9—ESTIMATED ANNUALIZED BURDEN HOURS BY FORM

Form name/form No.	Respondents	Responses per respondent	Total annual responses	Average hourly burden per response	Total hourly annual burden
FEMA Form 009–0–49, Request for Public Assistance	40	129	5,160	0.25	1,290
FEMA Form 009–0–91, Project Worksheet (PW) and a Request for Time Extension	40	840	33,600	1.5	50,400
FEMA Form 009–0–91A Project Work Sheet (PW) Damage Description and Scope of Work	40	784	31,360	1.5	47,040
FEMA Form 009–0–91B, Project Worksheet (PW) Cost Estimate Continuation Sheet and Request for additional funding for Cost Overruns	40	784	31,360	1.3333	41,813
FEMA Form 009–0–91C Project Worksheet (PW) Maps and Sketches Sheet	40	728	29,120	1.5	43,680
FEMA Form 009–0–91D Project Worksheet (PW) Photo Sheet	40	728	29,120	1.5	43,680
FEMA Form 009–0–120, Special Considerations Questions	40	840	33,600	0.5	16,800
FEMA Form 009–0–128, Applicant's Benefits Calculation Worksheet	40	784	31,360	0.5	15,680
FEMA Form 009–0–121, PNP Facility Questionnaire	40	94	3,760	0.5	1,880
FEMA Form 009–0–123, Force Account Labor Summary Record	40	94	3,760	0.5	1,880
FEMA Form 009–0–124, Materials Summary Record	40	94	3,760	0.25	940
FEMA Form 009–0–125, Rented Equipment Summary Record	40	94	3,760	0.5	1,880
FEMA Form 009–0–126, Contract Work Summary Record	40	94	3,760	0.5	1,880
FEMA Form 009–0–127, Force Account Equipment Summary Record	40	94	3,760	0.25	940
State Administrative Plan and State Plan Amendments/No Form	56	1	56	8	448
FEMA Form 009–0–111, Quarterly Progress Report	56	4	224	100	22,400
Request for Appeals & Recommendation/No Forms	56	9	504	3	1,512
Request for Arbitration & Recommendation resulting from Hurricanes Katrina or Rita/No Form	4	5	20	3	60
FEMA Form 009–0–141, FAC–TRAX System	40	913	36,520	1.25	45,650
Total			284,564	126.3333	339,853

Burden of Response: The burden per response varies by form (see Table 9). The total burden per response varies by respondent, with a maximum burden per respondent of 126.3333 hours if a respondent completes every form and those items without forms. The burden per response would not change due to this rulemaking.

Estimate of Total Annual Burden: The previously approved total annual burden was 466,025 hours. FEMA estimates that the number of respondents would decrease by 16 per year for FEMA Forms 009–0–49, 009–0–91, 009–0–91A, 009–0–91B, 009–0–91C, 009–0–91D, 009–0–120, 009–0–121, 009–0–123, 009–0–124, 009–0–125, 009–0–126, 009–0–127, 009–0–128, and 009–0–141. Table 9 shows the resultant change in the total annual burden by form. Based on the proposed rule's decrease in burden, the new estimated total annual burden is 339,853 hours. This is a reduction of 126,172 hours per year.

TABLE 9—ITEMIZED CHANGES IN ANNUAL BURDEN HOURS

Data collection activity/instrument	Program change (burden currently on OMB Inventory)	Program change (new)	Difference
FEMA Form 009–0–49, Request for Public Assistance	1,806	1,290	−516
FEMA Form 009–0–91, Project Worksheet (PW) and a Request for Time Extension	70,560	50,400	−20,160
FEMA Form 009–0–91A Project Work Sheet (PW) Damage Description and Scope of Work	65,856	47,040	−18,816
FEMA Form 009–0–91B, Project Worksheet (PW) Cost Estimate Continuation Sheet and Request for additional funding for Cost Overruns	58,537	41,813	−16,724
FEMA Form 009–0–91C Project Worksheet (PW) Maps and Sketches Sheet	61,152	43,680	−17,472
FEMA Form 009–0–91D Project Worksheet (PW) Photo Sheet	61,152	43,680	−17,472
FEMA Form 009–0–120, Special Considerations Questions	23,520	16,800	−6,720
FEMA Form 009–0–128, Applicant's Benefits Calculation Worksheet	21,952	15,680	−6,272
FEMA Form 009–0–121, PNP Facility Questionnaire	2,632	1,880	−752
FEMA Form 009–0–123, Force Account Labor Summary Record	2,632	1,880	−752
FEMA Form 009–0–124, Materials Summary Record	1,316	940	−376.0
FEMA Form 009–0–125, Rented Equipment Summary Record	2,632	1,880	−752

TABLE 9—ITEMIZED CHANGES IN ANNUAL BURDEN HOURS—Continued

Data collection activity/instrument	Program change (burden currently on OMB Inventory)	Program change (new)	Difference
FEMA Form 009–0–126, Contract Work Summary Record	2,632	1,880	−752
FEMA Form 009–0–127, Force Account Equipment Summary Record	1,316	940	−376
State Administrative Plan and State Plan Amendments/No Form	448	448	0
FEMA Form 009–0–111, Quarterly Progress Report	22,400	22,400	0
Request for Appeals & Recommendation/No Forms	1,512	1,512	0
Request for Arbitration & Recommendation resulting from Hurricanes Katrina or Rita/No Form	60	60	0
FEMA Form 009–0–141, FAC–TRAX System	63,910	45,650	−18,260
Total	466,025	339,853	−126,172

As required by 44 U.S.C. 3507(d), FEMA will submit a copy of the proposed rule to OMB for its review of the collection of information.

FEMA asks for public comment on the proposed collection of information to help determine how useful the information is, whether it can help FEMA perform its functions better, whether it is readily available elsewhere, how accurate the estimate of the burden of collection is, how valid the methods for determining burden are, how FEMA can improve the quality, usefulness, and clarity of the information, and how FEMA can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility, where indicated under the **ADDRESSES** section of the proposed rule, by the date given under the **DATES** section.

You are not required to respond to a collection of information unless it displays a currently valid control number from OMB. Before FEMA could enforce the collection of information requirements in this proposed rule, OMB would need to approve FEMA's request to collect this information.

F. Privacy Act/E-Government 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.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

A Privacy Threshold Analysis for this proposed rule was approved on May 23, 2019. 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 form and its contents are covered by a System of Records Notice, DHS/FEMA/PIA–013 Grant Management Programs and notice is provided by the DHS/FEMA–009 Hazard Mitigation Disaster Public Assistance and Disaster Loan Programs SORN. 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 13175 and believes that this proposed rule would 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 Sandy Recovery Improvement Act of 2013 requires the President when issuing regulations to ''consider the unique conditions that affect the general welfare of Indian tribal governments.'' To this end, FEMA, in coordination with DHS, OMB and several tribes and tribal organizations, decided to develop the Tribal Declarations Pilot Guidance. The guidance underwent extensive and exhaustive tribal consultation for over 3 years, which included over 150 listening sessions across the country and the adjudication of over 2,000 comments. Under the Tribal Declarations Pilot Guidance, FEMA established separate factors for evaluating tribal governments' requests. These factors include (but are not limited to) a lower minimum damage amount for Public Assistance ($250,000) and the elimination of a per capita damage amount. These factors reflect the Agency's acknowledgement that tribal nations have different needs and capabilities than states. The factors listed in the Tribal Declarations Pilot Guidance will not be altered by this proposed rule, as the proposed rule only applies to States and Territories. Additionally, as noted in the RIA, Tribal applicants and subapplicants would have received $10.74 million less in PA funding between 2008 and 2017 had the proposed rule been in effect. However, $9 million of that funding would have been potentially available for some of those Tribal governments had they requested a major disaster declaration under the Tribal Declarations Pilot Guidance because those Tribal governments received more than $250,000 in PA assistance. Therefore, it is possible more Tribal governments may request disaster declarations through the Tribal Declarations Pilot Guidance as a result of the proposed rule. However, as discussed in the RIA, there are many other factors that affect whether a Tribal government requests a declaration through the Tribal Declarations Pilot Guidance.

The remaining $1.74 million of PA funding that Tribal governments would likely not have received resulted in an average of $36,192 per project for each of the 44 Tribal governments across the 29 disasters analyzed. While FEMA appreciates that some Tribal governments have limited financial capabilities, FEMA believes most Tribal governments could handle such costs in responding to an event on their own. Accordingly, FEMA does not believe that consultation under Executive Order 13175 is necessary; however, FEMA welcomes comments on the potential impacts of the proposed rule on Tribal governments. Additionally, in accordance with the requirement in section 1239 of the DRRA that FEMA meaningfully consult with State, local and Tribal governments, FEMA will conduct additional outreach with Tribal government stakeholders as well as representatives of State, regional and local governments.

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

FEMA has reviewed this proposed rule under Executive Order 13132 believes that this proposed rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, on the distribution of power and responsibilities among the various levels of government, or on the policymaking discretion of the States, and therefore does not have federalism implications as defined by the Executive order. The proposed rule substantively affects one of several factors that FEMA considers when determining whether to recommend that the President declare that a major disaster has occurred on the basis of a governor's request that such a declaration be made. Importantly, FEMA considers all of the factors in making a decision on a recommendation, as each disaster request involves circumstances unique to that disaster event, the State, and affected communities. Moreover, FEMA's recommendation to the President does not obligate the President to agree with FEMA's recommendation. Rather, the President may declare or not declare a disaster on their own accord. Furthermore, the proposed rule does not affect a State's ability or choice to request such a declaration, since disaster declaration requests are voluntary, and States choose whether or not to request Federal assistance. While FEMA hopes that the proposed rule will encourage States to invest more in mitigating future disasters and their consequences, such funding decisions are ultimately left to the States' discretion. Accordingly, the proposed rule does not have federalism implications as defined by the Executive order.

However, FEMA welcomes comments on the proposed rule's potential impacts on States and territories, and their relationships with the Federal Government. Additionally, in accordance with the requirement in section 1239 of the DRRA that FEMA meaningfully consult with State, local and Tribal governments, FEMA will conduct additional outreach with representatives of State, regional and local governments.

I. Executive Order 11988, Floodplain Management, as amended

Pursuant to Executive Order 11988, 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; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to 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 a State eligible for PA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's PA program. When FEMA undertakes specific actions in administering PA that may have effects on floodplain management, 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 E.O..

J. Executive Order 11990, Protection of Wetlands

Pursuant to Executive Order 11990, 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 the Executive order, 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 a State eligible for PA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's PA program. When FEMA undertakes specific actions in administering PA that may have such effects, FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive order.

K. Executive Order 12898, Environmental Justice

Pursuant to 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.

This rulemaking will not have a disproportionately high or adverse effect on minority or low-income populations. The proposed rule substantively affects one of several factors that FEMA considers when determining whether to recommend that the President declare that a major disaster has occurred on the basis of a governor's request that such a declaration be made for PA. FEMA's PA program provides assistance to States, local governments, and private non-profits in repairing, restoring, and replacing facilities damaged by disasters, such as buildings, roads, bridges, and other infrastructure. FEMA's review of a governor's request for a major disaster declaration for PA only considers the relevant factors as they pertain to a disaster's impacts on those public or eligible private non-profit facilities covered by the PA program. Accordingly, 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. Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' OMB Circular A–119

''Voluntary consensus standards'' are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. OMB Circular A–119 directs agencies to use voluntary consensus standards in their regulatory actions in lieu of government-unique standards except where inconsistent with law or otherwise impractical. The policies in the Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards.

The proposed rule does not contain a ''standard'' as defined by OMB Circular A–119. This proposed rule revises the criteria that FEMA considers when recommending a State eligible for PA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA's PA program. Accordingly, an analysis under OMB Circular A–119 is not required.

M. 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, as proposed, is a ''major rule'' within the meaning of the CRA. It will have an annual effect on the economy of $100,000,000 or more, and may result in a major increase in costs or prices for Federal, State, or local government agencies. 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 206

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, 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.

■ 2. Revise § 206.48 introductory text and paragraph (a) to read as follows:

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

When FEMA reviews a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. FEMA considers other relevant information as well.

(a) *Public Assistance Program.* FEMA evaluates the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated cost of the assistance.* FEMA evaluates the estimated cost of Federal and non-Federal public assistance against the statewide population to give some measure of the per capita impact within the State. FEMA uses a figure of $2.32 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and will adjust this figure annually based on the Consumer Price Index for all Urban Consumers. With the exception of the District of Columbia, the Commonwealth of Puerto Rico, U.S. Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, and Guam, FEMA further adjusts each State's per capita indicator according to each State's Total Taxable Resources (TTR) as reported by the U.S. Department of Treasury. FEMA is establishing a minimum threshold of $1.535 million in public assistance damages per disaster in the belief that FEMA can reasonably expect even the lowest population States to cover this level of public assistance damage. FEMA will adjust this minimum threshold annually based on the Consumer Price Index for all Urban Consumers. FEMA will publish the adjusted figures annually in the **Federal Register**.

(2) *Localized impacts.* FEMA evaluates the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, FEMA has at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) *Insurance coverage in force.* FEMA considers the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduces the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, FEMA considers the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, FEMA considers that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* FEMA looks at the disaster history within the last 12-month period to better evaluate the overall impact on the State or locality. FEMA considers declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* FEMA also considers programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

* * * * *

Pete Gaynor,

Administrator, Federal Emergency Management Agency.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 391

[Docket No. FMCSA–2018–0224]

RIN 2126–AC15

Record of Violations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to eliminate the requirement that drivers operating commercial motor vehicles (CMVs) in interstate commerce prepare and submit a list of their convictions for traffic violations to their employers annually. This requirement is largely duplicative of a separate provision that requires each motor carrier to make an annual inquiry to obtain the motor vehicle record (MVR) for each driver it employs from every State in which the driver holds or has held a CMV operator's license or permit in the past year. To ensure motor carriers are aware of traffic violations for a driver who is licensed by a foreign authority rather than by a State, that provision would be amended to provide that motor carriers must make an annual inquiry to each driver's licensing authority where a driver holds or has held a CMV operator's license or permit. This change would require motor carriers to request the MVR equivalent from Canadian and Mexican driver's licensing authorities. FMCSA expects that removing the requirement for drivers to provide a list of their convictions for traffic violations to their employers annually would reduce the paperwork burden on drivers and motor carriers without adversely affecting CMV safety.

DATES: Comments on this notice of proposed rulemaking (NPRM) and information collection must be received on or before February 12, 2021.