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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 201

[Docket ID: FEMA-2012-0001]

RIN 1660-AAXX

Change in Submission Requirements for State Mitigation Plans

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule revises the Federal Emergency Management Agency (FEMA) Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years.

DATES: Comment on the proposed rule, including the Paperwork Reduction Act information collection, is due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Docket ID: FEMA-2012-0001, by one of the following methods:

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

Mail/Hand Delivery/Courier: Regulatory Affairs Division, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472-3100.

To avoid duplication, please use only one of these methods. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For instructions on submitting comments, See the Public Participation portion of the SUPPLEMENTARY INFORMATION section.

FOR FURTHER INFORMATION CONTACT: Frederick Sharrocks, Branch Chief, Assessment and Planning Branch, Risk Analysis Division, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598-3030. Phone: (202) 646-2796. Facsimile: (202) 646-2787. E-mail: Frederick.Sharrocks@fema.dhs.gov.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CFR—Code of Federal Regulations
DMA 2000—Disaster Mitigation Act of 2000
DHS—Department of Homeland Security
EA—Environmental Assessment
EIS—Environmental Impact Statement
FEMA—Federal Emergency Management Agency
FMA—Flood Mitigation Assistance
FOIA—Freedom of Information Act
HMA—Hazard Mitigation Assistance
HMGP—Hazard Mitigation Grant Program
IFR—Interim Final Rule
NEPA—National Environmental Policy Act of 1969
NFIP—National Flood Insurance Program
NPRM—Notice of Proposed Rulemaking
OMB—Office of Management and Budget
PDM—Pre-Disaster Mitigation
PRA—Paperwork Reduction Act of 1995
RFC—Repetitive Flood Claims
RIN—Regulatory Identifier Number
Stafford Act—Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended
SRL—Severe Repetitive Loss

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 - L. Executive Order 11988, Floodplain Management

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this Notice of Proposed Rulemaking (NPRM). Comments that will provide the most assistance to the Federal Emergency Management Agency (FEMA) in developing this rule will refer to a specific provision of the NPRM, explain the reason for any comments, and include other information or authority that supports such comments. All comments received will be posted, without

change, to <http://www.regulations.gov> and will include any personal information you have provided. If you submit a comment, please include the Docket ID for this rulemaking, FEMA-2012-0001, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

A. Privacy Act

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual who submitted the comment (or signed the comment, if submitted on behalf of an association, business, labor union, etc.). You may want to review the Federal Docket Management System system of records notice published in the Federal Register on March 24, 2005 (70 FR 15086).

B. Submission of Sensitive Information

Do not submit comments that include trade secrets, confidential commercial or financial information to the public regulatory docket. Please submit such comments separately from other comments on the rule. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address specified in the ADDRESSES section of this NPRM. If FEMA receives a request to examine or copy this information, FEMA will treat it as any other request under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Department of Homeland Security (DHS)'s FOIA regulation found in 6 Code of Federal Regulations (CFR) Part 5 and FEMA's regulations found in 44 CFR Part 5.

C. Public Meeting

FEMA does not plan to hold a public meeting on this NPRM, but you may submit

a request for one at the address specified in the ADDRESSES section of this NPRM explaining why one would be beneficial. If FEMA determines that a public meeting would aid this rulemaking, FEMA will hold one at a time and place announced by a notice in the Federal Register.

D. Public Input

FEMA welcomes comments on all aspects of the regulatory analysis; particularly comments regarding the cost and benefit estimates of this rulemaking, as well as the assumptions used to derive those estimates. Comments that would be most useful are those that include supporting data and/or provide suggestions that decrease cost or increase benefits, while still obtaining State Mitigation Planning objectives.

II. Background

A. Disaster Mitigation Act of 2000

The Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106-390, 114 Stat. 1552, provided an opportunity for States, Tribes, and local governments to take a new and revitalized approach to mitigation planning. The planning process provides a link between State and local mitigation programs. Both State level and local plans should address strategies for incorporating mitigation implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference hazardous materials and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster.

DMA 2000 amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) by repealing the previous Mitigation Planning section 409 and replacing it with a new Mitigation Planning section 322. Section 409 of the Stafford Act, 42 U.S.C. 5176, required mitigation plans and the use of minimum standards. These issues are now addressed in two separate sections of the law: mitigation planning is in section 322 of the Stafford Act, and minimum codes and standards are in section 323 of the Stafford Act. FEMA previously implemented section 409 through 44 CFR Part 206, Subpart M. The DMA 2000 planning requirements were placed in 44 CFR Part 201 to reflect the broader relevance of planning to all FEMA mitigation programs, while the minimum standards remained in 44 CFR Part 206, Subpart M.

Section 104 of DMA 2000 emphasized the need for State, Tribal, and local entities to closely coordinate mitigation planning and implementation efforts. It continued the requirement for a State mitigation plan as a condition of disaster assistance, and created incentives for increased coordination and integration of mitigation activities at the State level.

DMA 2000 also included a provision for an increased Federal share for hazard mitigation measures. FEMA implemented this provision through its development of Standard State and Enhanced State Mitigation Plans. Standard State Mitigation Plans allow a State to receive Hazard Mitigation Grant Program (HMGP) funding based on 15 percent of the total estimated eligible Stafford Act disaster assistance. Enhanced State Mitigation Plans allow a State to receive HMGP funds based on 20 percent of the total estimated eligible Stafford Act disaster assistance. Enhanced State Mitigation Plans must demonstrate that the State has developed a comprehensive mitigation program, that it

effectively uses available mitigation funding, and that it is capable of managing the increased funding.

B. Hazard Mitigation Assistance

FEMA's Hazard Mitigation Assistance (HMA) grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. Currently, FEMA administers the following HMA grant programs: HMGP, Pre-Disaster Mitigation (PDM), Flood Mitigation Assistance (FMA), Repetitive Flood Claims (RFC), and Severe Repetitive Loss (SRL).

HMGP assists in implementing long-term hazard mitigation measures following Presidential disaster declarations. Funding is available to implement projects in accordance with State, Tribal, and local priorities. HMGP grants may fund the updating of mitigation plans.

PDM provides funds on an annual basis for hazard mitigation planning and the implementation of mitigation projects prior to a disaster. The goal of the PDM program is to reduce overall risk to the population and structures, while at the same time, also reducing reliance on Federal funding from actual disaster declarations. PDM grants may fund the updating of mitigation plans.

FMA provides funds on an annual basis so that measures can be taken to reduce or eliminate risk of flood damage to buildings insured under the National Flood Insurance Program (NFIP). FMA grants may fund the updating of mitigation plans.

RFC provides funds on an annual basis to reduce the risk of flood damage to individual properties insured under the NFIP that have had one or more claim payments for flood damages.

SRL provides funds on an annual basis to reduce the risk of flood damage to residential structures insured under the NFIP that are qualified as SRL structures.

FEMA's HMA grants are provided to eligible Applicants (States/Tribes/Territories) that, in turn, provide subgrants to local governments and other eligible entities. Subgrantees may be a State agency, local government, private nonprofit organizations (for HMGP only), and Indian Tribal government. Indian Tribal governments acting as a subgrantee are accountable to the State grantee.

The Applicant selects and prioritizes subapplications developed and submitted to them by subapplicants. These subapplications are submitted to FEMA for consideration of funding. Usually, under FEMA's mitigation grant programs there is a standard State cost share. A State may request a reduced cost share.

C. Regulatory History

Table 1 displays the regulatory history for the Regulatory Identifier Number (RIN) 3067-AD22/1660-AA17. The RIN changed from 3067-AD22 to 1660-AA17; as FEMA became a component of the DHS and FEMA's RINS were renumbered to reflect this change.

Table 1 focuses on the changes to the mitigation planning requirements listed in §§ 201.3-201.5. Sections 201.3-201.5 describe the Standard and Enhanced State Plan reporting requirements. Currently, the Standard and Enhanced State Plans have to be updated every 3 years.

Table 1

RIN	Action	Date	Citation	CFR Part	CFR §	Effect on §§ 201.3, 201.4, & 201.5	Effect to State & Enhanced Plans Reporting Requirement dates in §§ 201.3, 201.4, & 201.5
3067-AD22	IFR	2/26/02	67 FR 8844	Added Part 201	201.1-201.6	Added 201.3, 201.4, & 201.5	States must have approved Standard State Mitigation Plan by November 1, 2003 and every 3 years from the date of the approval of the previous plan. Enhanced State Mitigation Plans resubmitted to the appropriate Regional Director every 3 years. For State to be eligible for 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 3 years prior to current major disaster declaration.

				Revised Part 206, Subpart H	206.220 206.226		
				Revised Part 206, Subpart M	206.400- 206.402		
				Revised Part 206, Subpart N	206.431, 206.432, 206.434, 206.435, & 206.436		
3067-AD22	IFR	10/1/02	67 FR 61512	Revised Part 201	201.3, 201.4, & 201.6	Revised 201.3 and 201.4	Update the Standard State Mitigation Plan by November 1, 2004 and every 3 years from the date of the approval of the previous plan.
				Revised Part 206 Subpart N	206.432 & 206.434		
1660-	IFR	10/28/03	68 FR	Re-	201.6		

AA17			61368	vised Part 201			
				Revised Part 204	204.3 & 204.51		
				Revised Part 206 Subpart H	206.226		
1660-AA17	Correcting Amendment	11/10/03	68 FR 63738	Revised Part 206 Subpart N	206.435		
1660-AA17	IFR	9/13/04	69 FR 55094	Addition and Revisions to Part 201	201.3, 201.4, & 201.6	Addition 201.3 & Revision of 201.4	Request from the Governor to the Director of FEMA, requesting an extension to the plan deadline in accordance with § 201.4(a)(2). Governor or Indian Tribal leader may request a 6 month extension of the Standard State

							Mitigation Plan, up to May 1, 2005.
				Re- vision Part 206 Sub- part H	206.226		
				Re- vision Part 206 Sub- part N	206.432 & 206.434		
1660- AA17	Final Rule	10/31/07	72 FR 61552	Re- vision to Part 201	201.4	Revision to 201.4(c)(2)(ii)	Not Applicable

3067-AD22's February 26, 2002 Interim Final Rule (IFR) entitled, "Hazard Mitigation Planning and Hazard Mitigation Grant Program", implemented section 322 of the Stafford Act. This included the reporting requirement that Standard State Mitigation Plans had to be updated by November 1, 2003 and every 3 years from the date of the approval of the previous plan in order to continue program eligibility. It also stated that Enhanced State Mitigation Plans had to be resubmitted to the appropriate Regional Director every 3 years. Additionally, for States to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation Plan must be approved by FEMA within the 3 years prior to the current major disaster declaration.

3067-AD22's October 1, 2002 IFR entitled, "Hazard Mitigation Planning and Hazard Mitigation Grant Program", revised §§ 201.3 and 201.4. This revision changed the date from November 1, 2003 to November 1, 2004, by which the Standard State Mitigation Plans had to be updated. After the November 1, 2004 deadline, the requirement became every 3 years from the date of the approval of the previous plan.

1660-AA17's October 28, 2003 IFR entitled, "Hazard Mitigation Planning and Hazard Mitigation Grant Program", clarified the date by which local governments, as well as Tribes applying as subapplicants, must have a mitigation plan as a condition of receiving FEMA project grant assistance. These clarifications did not effect the mitigation planning reporting requirements in §§ 201.3-201.5.

1660-AA17's November 10, 2003 Correcting Amendment was entitled "Hazard Mitigation Grant Program"; Correction. This technical correction changed a citation referenced in § 206.435(b) from paragraph (b), to paragraph (c). This technical correction was necessary due to a mistake that was made when the February 26, 2002

IFR redesignated paragraphs within § 206.434, but did not revise a corresponding cross reference in § 206.435(b). This correcting amendment did not effect the mitigation planning reporting requirements in §§ 201.3-201.5.

1660-AA17's September 13, 2004 IFR was entitled "Hazard Mitigation Planning and Hazard Mitigation Grant Program". This IFR provided a mechanism for Governors or Indian Tribal leaders to request up to a 6 month extension of the plan approval deadline for State-level mitigation plans, up to May 1, 2005. This was accomplished through the addition of a paragraph to § 201.3 and a revision to § 201.4.

On October 31, 2007, FEMA published 1660-AA17's Final Rule entitled "Hazard Mitigation Planning and Hazard Mitigation Grant Program". FEMA adopted as final without substantive changes, the above described IFRs that established requirements for hazard mitigation planning and HMGP pursuant to sections 322 and 323 of the Stafford Act. The Final Rule revised a paragraph in § 201.4 Standard State Mitigation Plans; however, it did not effect the mitigation planning reporting requirements.

Table 2 displays the regulatory history of 1660-AA36, "Flood Mitigation Grants and Hazard Mitigation Planning". In Table 2, FEMA solely focuses on the changes that were made to 44 CFR Part 201 in 1660-AA36. (1660-AA36 also dealt with 44 CFR Parts 59, 61, 78, 79, 80, and 206.) Table 2 focuses on the changes to the mitigation planning requirements listed in §§ 201.3-201.5. Sections 201.3-201.5 describe the Standard and Enhanced State Plan reporting requirements.

Table 2

RIN	Action	Date	Citation	CFR Parts limited to 201	CFR § limited to Part 201	Effect on §§ 201.3, 201.4, & 201.5	Effect to State and Enhanced Plans Reporting Requirement dates in §§ 201.3, 201.4, & 201.5
1660-AA36	IFR	10/31/07	72 FR 61720	Addition and Revisions to Part 201	201.2, 201.3, 201.4, 201.6, & 201.7	Revisions to 201.3 and Revisions and an Addition to 201.4	Removed references to November 1, 2004 requirement; since, this date has passed it is no longer applicable.
1660-AA36	Final Rule	9/16/09	74 FR 47471	Removal and Revisions to Part 201	201.2, 201.3, 201.6, & 201.7	201.3	Not Applicable

1660-AA36's October 31, 2007 IFR modified the mitigation planning reporting requirements at 44 CFR Part 201 by removing references to November 1, 2004 in §§ 201.3 and 201.4. Since the November 1, 2004 Standard State Mitigation Plan reporting requirement deadline had already occurred, this portion of the Standard State Mitigation Plan requirement was obsolete and could be removed from the regulatory text, as a technical correction.

1660-AA36's September 16, 2009 Final Rule adopted the regulations established by the October 31, 2007 IFR. It addressed the comments received from the public in response to the October 31, 2007 IFR, made changes to correct errors identified in the public comments, made technical corrections, and finalized the IFR contained in 44 CFR

Parts 59, 61, 78, 79, 80, 201, and 206. The Final Rule removed a paragraph and revised the last sentence of another paragraph in § 201.3, but this did not involve any changes to the mitigation planning reporting requirements.

On April 3, 2009, FEMA published a Final Rule entitled “Technical, Organizational and Conforming Amendments” that updated the agency’s titles to reflect the current organization (74 FR 15328).

D. Discussion of the NPRM

Currently, under the mitigation planning regulations found at 44 CFR Part 201, State Mitigation Plans (Standard and Enhanced) are required to be updated every 3 years as a condition of receiving non-emergency Stafford Act assistance and FEMA mitigation grants. This proposed rule reduces the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years.

The purpose of mitigation planning is to develop and maintain a continuous process leading to implementation of actions that reduce the Nation’s losses from future natural disasters, promoting more resilient communities, thus reducing disaster response and recovery costs. Mitigation planning may differ from other types of planning in that this inclusive process is designed to encourage coordination with other agencies, stakeholders, programs, and initiatives. Further, in order to be effective, plans must be relevant. Therefore, § 201.4(d) requires that mitigation plans be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities.

Mitigation planning is a continuous process of engaging stakeholders, identifying hazards as conditions may change, assessing risk and vulnerabilities as development

patterns may change, and developing a strategy that can be implemented using available resources, programs, and initiatives based on current priorities. The outcome of the mitigation planning process is implementation of mitigation actions that reduce vulnerabilities identified in the risk assessment.

As stated in the planning regulations at § 201.4(a), the mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. In addition, per § 201.4(c)(4)(i), States have the responsibility to support, through funding and technical assistance, the development of Local Mitigation Plans.

As mitigation planning is a performance based approach rather than prescriptive, there is a wide range in the level of effort invested to meet the minimum requirements for FEMA approval. This performance based approach allows State, local, and Tribal governments the ability to tailor mitigation strategies and actions to meet specific risks and vulnerabilities identified through risk assessments. In many instances, mitigation plan updates provide opportunities for State, local, and Tribal governments to verify that the plans are still relevant, but also to strengthen and improve mitigation strategies and specific actions to reduce risk and improve resilience.

FEMA proposes the change in the frequency of the update requirement for several reasons. First, the proposed reduction in update frequency will reduce the burden on States, those Indian Tribal governments that may choose to develop Enhanced plans, as well as FEMA. Second, reducing the update frequency from every 3 to 5 years aligns the State update cycle with local and Tribal update requirements of every 5 years. Third, by

relieving the burden imposed from the frequency of State plan updates, States and FEMA may be able to shift resources from the update and review cycle, to continuing to build partnerships as well as capacity through increased delivery of training and technical assistance to support Local and Tribal Mitigation Plan development, update, and implementation. Finally, the proposed reduction in burden from lengthening the update frequency may allow States to focus on implementing additional mitigation actions identified through the planning process, as a means to increase resilience and reduce the Nation's risk to natural hazards.

E. Stakeholder Involvement

Since 2008, stakeholders, such as the National Emergency Management Association (NEMA), have voiced concerns to FEMA about the frequency of the update requirement for State Mitigation Plans. For example, the NEMA Mitigation Committee prepared a position paper, dated September 8, 2008, stating that the

disparity between update cycles of [S]tate and local-[T]ribal plans creates an undue hardship on a number of [S]tates with limited staffing or that have experienced multiple disasters within a plan lifecycle. These [S]tates feel compelled to begin the plan review and update process immediately after their plan was reapproved.

This position paper included a recommendation to support

a revision to 44 CFR Part 201 to extend State Hazard Mitigation Plans revision and revision requirements, and FEMA review of [S]tate mitigation activities, from [3] years to [5] years to match the review cycles for local and [T]ribal hazard mitigation plans.

In 2011, DHS received public comments on the mitigation planning regulations in response to a Federal Register notice published as part of a retrospective review of its

regulations. According to the final report titled “Final Plan for the Retrospective Review of Existing Regulations” dated August 22, 2011 (See page 16),

DHS received a comment (the top-voted comment mentioned above) recommending that DHS change the current FEMA State Standard and Enhanced Hazard Mitigation Plan update requirement from every [3] years to every [5] years so that it is consistent with current Local Hazard Mitigation Plan update requirements. Commenters asserted that [5] years would be an appropriate timeframe for [S]tate mitigation plan updates for both efficiency and resource-limitation reasons.

As part of the review, DHS determined that FEMA will consider possible changes to the mitigation planning regulations as part of a long-term retrospective review over the next 3 years. To review the “Final Plan for the Retrospective Review of Existing Regulations”, click on the following link: <https://www.dhs.gov/xlibrary/assets/dhs-ogc-final-retrospective-review-plan-8-22-11-final.pdf>.

On November 8, 2011, 23 Members of Congress sent a letter to FEMA Administrator Fugate requesting that FEMA

alter its regulations under 44 CFR Part 201 and extend to [5] years the cycle by which State Hazard Mitigation Plans must be submitted. The existing [3]-year time frame for FEMA to review and approve new mitigation plans has become increasingly burdensome for many [S]tate planning offices.

The letter further stated that

[t]he shorter cycle creates an undue hardship on [S]tates with limited staffing or those that have experienced multiple disasters within a plan lifecycle. In order to prevent a disqualifying lapse, these [S]tates are compelled to restart the process immediately following the approval of the previous plan.

Finally, the letter closed by stating

[m]aintaining high quality up-to-date mitigation plans is a critical component of our national disaster response plan. Extending the update cycle to [5] years would ensure that our [S]tate planning offices can complete this vital task, along with their other duties, while maximizing available resources.

The 23 Members of Congress asked FEMA to amend 44 CFR Part 201 to accommodate this change.

F. Section-by-Section Analysis

FEMA proposes to amend §§ 201.3-201.5, based on the reasons listed earlier in this preamble and to address the comments it has received from stakeholders. Every reference to FEMA Standard State and Enhanced State Mitigation Plan update requirements would be changed from 3 years to 5 years, so that it is consistent with current Local and Tribal Mitigation Plan update requirements. Based on comments received to date, all parties agree that 5 years would be an appropriate timeframe for Standard State and Enhanced State Mitigation Plan updates for both efficiency and resource-limitation reasons.

G. Implementation

Currently, Standard State Mitigation Plans and Enhanced State Mitigation Plans are required to be updated every 3 years from the date of the approval of the previous plan. The NPRM would extend the Standard State Mitigation Plan and the Enhanced State Mitigation Plan update requirement to every 5 years from the date of the approval of the previous plan.

III. Regulatory Analyses

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

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, Oct. 4, 1993) as supplemented by Executive Order 13563, “Improving Regulation and Regulatory Review” (76 FR 3821, Jan. 21, 2011). This proposed rule is not a significant regulatory action, and therefore has not been reviewed by the Office of Management and Budget (OMB).

This portion of the preamble summarizes FEMA’s analysis of the economic impacts of this proposed rule. However, readers seeking greater detail are encouraged to read the full regulatory evaluation, a copy of which FEMA has placed in the docket for this rulemaking.

In conducting the aforementioned analyses, FEMA has determined that the proposed rule: (1) has benefits that justify its costs; (2) is not an economically “significant regulatory action” as defined in section 3(f) of Executive Order 12866; (3) would not have a significant economic impact on a substantial number of small entities; and (4) would not impose an unfunded mandate on State, local, or Tribal governments, or on the private sector by exceeding \$100 million or more annually (adjusted for inflation with a base year of 1995). These analyses are summarized below.

Who is Potentially Affected by this Rule

The proposed rule would affect “States” as defined by section 102 of the Stafford Act, 42 U.S.C. 5122, that choose to submit updated Standard State Mitigation Plans or Enhanced State Mitigation Plans to FEMA for approval.

Savings to Society of this Rule

FEMA estimates the cost of State Mitigation Plan updates in a given year, where all updates are submitted, to be approximately \$15 million (\$14,993,120). The extension of the State Mitigation Plan update frequency from 3 to 5 years would reduce the number of State Mitigation Plan updates submitted by 2 over 15 years. The resulting cost savings is approximately \$30 million over 15 years (\$29,986,240); \$18.8 million discounted at 7 percent.

Benefits of this Rule

The proposed rule would provide a number of unquantified benefits including aligning the State Mitigation Plan update cycle with the Local and Tribal Mitigation Plan update cycle and providing greater flexibility for States to submit their State Mitigation Plan updates. The proposed rule would also provide an opportunity for States to apply cost savings from the reduction in State Mitigation Plan update frequency to other means of increasing resilience and reduction of the Nation's risk to natural hazards.

Significance Determination

Under Executive Order 12866, a significant regulatory action is subject to the OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- 1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- 2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

- 3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- 4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The rule is estimated to have a net quantified savings to society of approximately \$30 million over 15 years. The annual impact of this rule is an estimated net quantified savings to society of approximately \$2 million (\$1,999,083). As such, this rule is not an economically significant regulatory action and has not been reviewed by OMB.

Retrospective Review

To facilitate the periodic review of existing significant regulations, Executive Order 13563 requires agencies to consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. The Executive Order requires agencies to issue a retrospective review plan, consistent with law and the agency's resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

The Department of Homeland Security issued its "Final Plan for the Retrospective Review of Existing Regulations" (Plan) on August 22, 2011. The Plan can be viewed at <http://www.dhs.gov/xabout/open-government.shtm>. This rule was included in the Plan as a long-term retrospective review candidate, meaning the agency would undertake

retrospective review of the regulation within 3 years of the date of the Plan. The Plan stated that FEMA would consider whether it would be more efficient to extend the review period to 5 years for each of the plans as requested by public commenters. Review of FEMA's existing Mitigation Plan regulations revealed the potential for State cost savings, approximately \$30 million over 15 years, as well as other benefits. Therefore, FEMA is extending the State Mitigation Plan minimum update frequency from 3 to 5 years.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), FEMA evaluated and considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As the proposed rule would only impact States, which are not considered small entities, FEMA does not anticipate that the rule would have a significant economic impact on a substantial number of small entities. However, FEMA invites comments on this initial determination.

C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, 109 Stat. 48 (Mar. 22, 1995) (2 U.S.C. 1501 *et seq.*), requires Federal agencies to assess the effects of their discretionary regulatory actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. As the proposed rule would not have an impact greater than \$100,000,000 or more in any one year, it is not an unfunded Federal mandate.

D. Paperwork Reduction Act (PRA) of 1995

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

FEMA withdraws the previous Federal Register notice regarding the information collection identified as OMB Control Number 1660-0062, which published on February 24, 2012 (77 FR 11142). In this NPRM, FEMA is seeking a revision to the already existing collection of information OMB Control Number 1660-0062, as FEMA has further refined our estimates related to 1660-0062. This NPRM serves as the 60-day comment period for this proposed change pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans.

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

OMB Number: 1660-0062.

Form Titles and Numbers: None.

Abstract: The purpose of State, Local, and Tribal Hazard Mitigation Plan requirements is to support the administration of FEMA Mitigation grant programs, and a significant State, local, and Tribal commitment to mitigation activities, comprehensive mitigation planning, and strong program management. Implementation of planned, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals and prioritization to reduce

risks from natural hazards. This proposed rule revises FEMA Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years. This reduction in frequency will result in a reduction in the burden hours on the public.

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 56 States submit State Mitigation Plan updates to FEMA. In addition, those 56 States also review and submit Local and Tribal Mitigation Plans and plan updates to FEMA.

Estimated Total Annual Burden Hours: 227,366 hours.

The previously approved Total Annual Burden Hours was 768,320 hours. Based on adjustments to how this burden was estimated and the proposed rule's reduction in burden, the new estimated Total Annual Burden Hours is 227,366 hours. This is a decrease of 540,954 hours, of which approximately 8,899 hours are attributed to the change in State Mitigation Plan update frequency. However, some of the burden previously accounted for has likely shifted to annual cost estimates.

Table 3 provides estimates of annualized cost to respondents for the hour burdens for the collection of information.

Table 3

Type of Respondent	Form Name/ Form Number	No. of Respondents	No. of Responses per Respondent ¹	Total No. of Responses ²	Avg Burden per Response (hours)	Total Annual Burden (hours)	Avg Hourly Wage Rate ³	Total Annual Respondent Cost ⁴
Local or Tribal Government	New Local and Tribal Plans	56	5	280	289	80,920	\$45.33	\$3,668,104
Local or Tribal Government	Local and Tribal Plan Updates	56	9	504	249	125,496	\$45.33	\$5,688,734
State Government	State Review of Local and Tribal Plans	56	14	784	8	6,272	\$45.33	\$284,310
State Government	Standard State Plan Updates	46	0.2	9	1,040	9,360	\$45.33	\$424,289
State Government	Enhanced State Plan Updates	10	0.2	2	2,659	5,318	\$45.33	\$241,065
Total		56		1,579		227,366		\$10,306,502

1- Standard State Plan Updates and Enhanced State Plan Updates Number of Responses per Respondent represents an annual average over 5 years (1 plan update / 5 years = 0.2).

2-Standard State Plan Updates Total Number of Responses is rounded to the nearest plan.

3- The “Avg. Hourly Wage Rate” for each respondent includes a 1.4 multiplier to reflect a loaded wage rate and rounded to the nearest cent.

4- Rounded to the nearest dollar.

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Estimated Total Annual Cost: \$33,532,730.

The previously approved Total Annual Cost was \$33,452,652. Based on adjustments to how this cost was estimated and the proposed rule's reduction in cost, the new estimated Total Annual Cost is \$33,532,730. This is an increase of \$80,078. This includes a \$1,350,580 reduction in cost attributed to the change in State Mitigation Plan update frequency.

Table 4 provides estimates of total annual cost burden to respondents or recordkeepers resulting from the collection of information.

Table 4

Data Collection Activity/Instrument	*Annual Capital Start-Up Cost (investments in overhead, equipment and other one-time expenditures)	*Annual Operations and Maintenance Cost (such as recordkeeping, technical/professional services, etc.)	Annual Non-Labor Cost (expenditures on training, travel and other resources)	Total Annual Cost to Respondents
Development of New Local and Tribal Plans	\$12,289,200			\$12,289,200
Local and Tribal Plan Updates		\$16,299,360	\$2,716,560	\$19,015,920
State Review of Local and Tribal Plans				\$0
Standard State Mitigation Plan Updates		\$1,217,700	\$202,950	\$1,420,650
Enhanced State Mitigation Plan Updates		\$691,680	\$115,280	\$806,960
Total	\$12,289,200	\$18,208,740	\$3,034,790	\$33,532,730

Overall Estimated Total Cost: \$43,839,232.

The overall estimated cost of this collection is \$43,839,232 (\$10,306,502 + \$33,532,730).

This is an increase of \$10,386,580 (\$33,452,652 - \$43,839,232) from the currently approved OMB inventory.

Comments

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

E. National Environmental Policy Act (NEPA) of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.) requires agencies to consider the impacts in their decision-making on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 et seq., require Federal agencies to prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that typically do not

trigger significant impacts to the human environment individually or cumulatively. Agencies develop environmental assessments (EA) to evaluate those actions that do not fit an agency's categorical exclusion and for which the need for an EIS is not readily apparent. At the end of the EA process the agency will determine whether to make a Finding of No Significant Impact or whether to initiate the EIS process.

Rulemaking is a major federal action subject to NEPA. The List of exclusion categories at 44 CFR 10.8(d)(2)(ii) excludes the preparation, revision, and adoption of regulations from the preparation of an EA or EIS, where the rule relates to actions that qualify for categorical exclusions. The development of plans under 44 CFR Part 201 is categorically excluded under 44 CFR 10.8(d)(2)(iii) and (xviii)(E). No extraordinary circumstances exist requiring the need to develop an EA or EIS. See 44 CFR 10.8(d)(3). An EA will not be prepared because a categorical exclusion applies to this rulemaking action and no extraordinary circumstances exist.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This NPRM does not have Tribal implications under Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000), because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

This proposed rule would revise FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates

extending the update requirement from 3 to 5 years. Local and Tribal Mitigation Plan updates are already required every 5 years; therefore, this rulemaking simply proposes to change the Standard State and Enhanced State Mitigation Plan update requirement to align it with the Local and Tribal Mitigation Plan update requirement.

FEMA has not had any Indian Tribal governments meet the Enhanced State Mitigation Plan criteria identified at 44 CFR 201.5; therefore, no Indian Tribal governments have received the increased HMGP funding. Therefore, there is no Tribal implication related to this rulemaking.

G. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, “Federalism” (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. FEMA has analyzed this NPRM under the Executive Order and determined that it does not have implications for federalism.

This proposed rule would revise FEMA’s Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates, extending the update requirement from 3 to 5 years. As stated under the Stakeholder Involvement heading, FEMA has received substantial input requesting that FEMA change its Mitigation Planning regulations to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates. Some of those requests have come from State officials.

The Standard State and Enhanced State Mitigation Plan updates are voluntarily submitted by States. Per DMA 2000, Mitigation Plans are a condition of receipt of an

increased Federal share of hazard mitigation measures. If the States chooses not to comply with the Mitigation Regulations in 44 CFR Part 201, they still will be eligible for limited emergency assistance under the Stafford Act. (See 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, and 5192). Additionally, it is at the Administrator's discretion, as to whether or not he may require a Local Mitigation Plan for the RFC Program. (See 42 CFR 201.6(a)).

H. Executive Order 12630, Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights" (53 FR 8859, Mar. 18, 1988).

I. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 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, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level.

This rule relates to the implementation of section 322 of the Stafford Act (42 U.S.C. 5165). Section 322 focuses specifically on mitigation planning to identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and Tribal areas; development of Local Mitigation Plans; technical assistance to local and Tribal

governments for mitigation planning; and identifying and prioritizing mitigation actions that the State will support as resources become available. The proposed reduction in burden from the update frequency may allow States to focus on implementing additional mitigation actions identified through the planning process as a means to increase resilience and reduce the Nation's risk to natural hazards; thereby, also protecting human lives and the environment. 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.

J. Executive Order 12988, Civil Justice Reform

This NPRM meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

K. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This NPRM will not create environmental health risks or safety risks for children under Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, Apr. 23, 1997).

L. Executive Order 11988, Floodplain Management

FEMA has prepared and reviewed this rule under the provisions of Executive Order 11988, as amended "Floodplain Management" (42 FR 26951, May 25, 1977). The regulations at 44 CFR Part 9 set forth FEMA's policy, procedures, and responsibilities in implementing this Executive Order. In summary, these are, to the greatest possible degree: to avoid long and short term adverse impacts associated with the occupancy and

modification of floodplains; avoid direct and indirect support of floodplain development whenever there is a practical alternative; reduce the risk of flood loss; promote the use of nonstructural flood protection methods to reduce the risk of flood loss; minimize the impacts of floods on human health, safety and welfare; restore and preserve the natural and beneficial values served by floodplains; and adhere to the objectives of the Unified National Program for Floodplain Management.

As stated in the preamble, the planning process provides a link between State and local mitigation programs. Both State level and local plans should address strategies for incorporating post-disaster early mitigation implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference comprehensive plans, land use plans, master plans, and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as to expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster. This proposed rule revises FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates, extending the update requirement from 3 to 5 years. The proposed change aligns the State update requirements with Local and Tribal Mitigation Plan update requirements, which does not conflict with the intent of the Executive Order.

List of Subjects in 44 CFR Part 201

Administrative practice and procedure, Disaster assistance, Grant programs, and Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FEMA proposes to amend 44 CFR Part 201, as follows:

PART 201—MITIGATION PLANNING

1. The authority citation for Part 201 continues to read as follows:

Authority: Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; Homeland Security Act of 2002, 6 U.S.C. 101; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; E.O. 13286, 68 FR 10619, 3 CFR, 2003 Comp., p. 166.

2. In § 201.3, revise paragraphs (b)(5), (c)(2), and (c)(3), and the second sentence of paragraph (e)(3) to read as follows:

§ 201.3 Responsibilities.

* * * * *

- (b) * * *

(5) Conduct reviews, at least once every 5 years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

- (c) * * *

(2) In order to be considered for the 20 percent HMGP funding, prepare and submit an Enhanced State Mitigation Plan in accordance with § 201.5, which must be reviewed and updated, if necessary, every 5 years from the date of the approval of the previous plan.

(3) At a minimum, review and update the Standard State Mitigation Plan every 5 years from the date of the approval of the previous plan in order to continue program eligibility.

* * * * *

(e) * * *

(3) * * *The plan must be reviewed and updated at least every 5 years from the date of approval of the previous plan.

3. In § 201.4, revise the first sentence of paragraph (d) to read as follows:

§ 201.4 Standard State Mitigation Plans.

* * * * *

(d) * * *Plan must be reviewed and revised to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities and resubmitted for approval to the appropriate Regional Administrator every 5 years. * * *

4. In § 201.5, revise the third sentence of paragraph (a), revise the first sentence of paragraph (c)(1), and revise (c)(2) to read as follows:

§ 201.5 Enhanced State Mitigation Plans.

(a) * * *In order for the State to be eligible for the 20 percent HMGP funding, FEMA must have approved the plan within 5 years prior to the disaster declaration.

* * * * *

(c) * * *

(1) A State must review and revise its plan to reflect changes in development, progress in statewide mitigation efforts, and changes in priorities, and resubmit it for approval to the appropriate Regional Administrator every 5 years. * * *

(2) In order for a State to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 5 years prior to the current major disaster declaration.

Dated:

W. Craig Fugate,
Administrator,
Federal Emergency Management Agency.