

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

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RIN 1660-AA83

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

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

DATES: This final rule is effective on June 1, 2019.

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I. Executive Summary

A. Purpose of the Regulatory Action

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

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

FEMA is issuing this final rule to comply with SRIA and to provide clarity on the IA declaration factors that FEMA currently considers in support of its recommendation to the President on whether a major disaster declaration authorizing IA is warranted. The additional clarity may reduce delays in the declaration process by decreasing the back and forth between States and FEMA during the declaration process. FEMA is also finalizing a factor on Fiscal Capacity to provide additional relevant information and context regarding potential disaster situations.

2. Legal Authority

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

B. Summary of Major Provisions

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

FEMA is revising the current factors to provide additional clarity regarding the considerations that FEMA has evaluated in recent years when making a recommendation on whether Individual Assistance is warranted for a major disaster declaration. This final rule also adds new factors that will help FEMA more accurately and consistently determine whether the impact of an event is beyond State and local government capabilities. FEMA is revising 44 CFR 206.48(b) to identify the following factors: (1) State Fiscal Capacity and Resource Availability, (2) Uninsured Home and Personal Property Losses, (3) Disaster Impacted Population Profile, (4) Impact to Community Infrastructure, (5) Casualties, and (6) Disaster Related Unemployment. As is currently the practice, FEMA will continue to use a myriad of factors and data to formulate its recommendations to the President on major disaster

declarations that authorize IA. No single data point or factor will be determinative of FEMA's recommendation nor will any single factor necessarily affect the President's ultimate determination of whether a major disaster declaration authorizing IA is warranted. FEMA purposely declined to be more restrictive in areas of the final rule because disaster events can vary greatly from incident to incident, and FEMA must retain the flexibility and discretion to properly advise the President regarding situations or circumstances that FEMA may not be able to fully predict or define in a rulemaking. Moreover, as a result of climatological and demographic changes, disaster trends are likely to continue to change in ways that may require policy shifts at the agency or Administration level. FEMA wants to ensure that we retain as much flexibility as possible. The final factors do not limit the President's discretion regarding major disaster declarations.

II. Background and Proposed Rule

When a catastrophe occurs in a State, the State's Governor may request a Presidential declaration of a major disaster¹ pursuant to Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). 42 U.S.C. 5170; 44 CFR 206.36(a). Such a request must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. 42 U.S.C. 5170.

The capability to respond to a catastrophe varies from State to State. The initial decision on whether to seek supplemental Federal assistance to help a State respond to and recover from a natural disaster lies with each State. The basis for any State request for a major disaster declaration must be a finding that (1) the situation is of such severity and magnitude that an effective response is beyond the capabilities of the State and affected local governments, and (2) Federal assistance under the Stafford Act is necessary to

supplement the efforts and available resources of the State, local governments, disaster relief organizations, and compensation by insurance for disaster-related losses. 44 CFR 206.36(b)(1)–(2).

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

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

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

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

Disaster Case Management Program: The Disaster Case Management Program

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

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

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

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

Congress directed FEMA to review, update, and revise these factors, including 44 CFR 206.48(b)(2) related to trauma and the specific conditions or losses that contribute to trauma, to provide more objective criteria for evaluating the need for assistance to individuals, to clarify the threshold for eligibility, and to speed a declaration of a major disaster or emergency² under

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

² The factors that FEMA considers to evaluate the need for assistance to individuals under the Stafford Act are at 44 CFR 206.48. FEMA uses these factors to evaluate a governor's request for a declaration of a major disaster, not an emergency. SRIA Section 1109 states that FEMA must review, update, and revise the factors in 44 CFR 206.48(b). The factors that FEMA uses to evaluate a governor's request for emergency assistance, however, are not provided in 44 CFR 206.48(b) or in FEMA's regulations. Therefore, the scope of this rulemaking will apply only to Individual Assistance factors that

the Stafford Act. SRIA required the completion of this rulemaking by January 29, 2014.

On November 12, 2015, FEMA published a notice of proposed rulemaking pursuant to Section 1109 of SRIA. 80 FR 70116. FEMA proposed to revise 44 CFR 206.48(b) to include the following factors: (1) State Fiscal Capacity and Resource Availability, (2) Uninsured Home and Personal Property Losses, (3) Disaster Impacted Population Profile, (4) Impact to Community Infrastructure, (5) Casualties, and (6) Disaster Related Unemployment. A complete description of each factor can be found in the proposed rule. *See* 80 FR 70116. This final rule incorporates the reasoning of the proposed rule except as reflected elsewhere in this preamble. The final rule adopts proposed rule with two changes: removal of the sub-factors related to *State Services and Planning After Prior Disasters*. These changes are discussed below in *III. Discussion of Public Comments on the Proposed Rule*.

FEMA's Outreach Efforts Following Publication of the Notice of Proposed Rulemaking

Section 1109 of SRIA requires FEMA to cooperate with State, local, and Tribal emergency management agencies during the process of reviewing, updating, and revising the factors found at 44 CFR 206.48(b). FEMA conducted outreach prior to publication of the NPRM. *See* 80 FR 70119. In addition, following publication of the NPRM, on December 8 and 9, 2015, FEMA held two webinars for State governors' offices, State emergency managers, and national level State associations to explain the provisions of the proposed rule. At the end of both webinars, FEMA accepted comments from the listeners. FEMA considered these comments in the formulation of this final rule and summarizes and responds to these comments below. The webinar presentation itself can be found in the rulemaking docket at www.regulations.gov.

III. Discussion of Public Comments on the Proposed Rule

FEMA received written comments from 35 commenters in response to the

FEMA considers when evaluating a Governor's request for a major disaster declaration. Section 502 of the Stafford Act authorizes FEMA to provide IHP assistance as part of an emergency declaration. FEMA has previously considered some of the factors found at 206.48(b) when considering an emergency declaration request that includes IHP assistance. FEMA will continue to consider some of the factors, when applicable, at 44 CFR 206.48(b) when evaluating an emergency declaration request that includes IHP assistance.

proposed rule. The majority of commenters were from State emergency management agencies, but commenters also included members of Congress, an emergency management association, charitable organizations, and private citizens. The commenters raised a variety of issues that are discussed below.

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

Fiscal Capacity

The proposed Fiscal Capacity factor defined fiscal capacity as a State's potential ability to raise revenue from its own sources to respond to and recover from a disaster. The proposed rule identified the following data points as sub-factors:

- Total Taxable Resources (TTR) of the State. TTR is the U.S. Department of Treasury's annual estimate of the relative fiscal capacity of a State. A low TTR may indicate a greater need for supplemental Federal assistance than a high TTR.
- Gross Domestic Product (GDP) by State. GDP by State is calculated by the Bureau of Economic Analysis. GDP by State may be used as an alternative or supplemental evaluation method to TTR.
- Per capita personal income by local area. Per capita personal income by local area is calculated by the Bureau of Economic Analysis. A low per capita personal income by local area may indicate a greater need for supplemental Federal assistance than a high per capita personal income by local area.

FEMA received comments from 22 commenters regarding this proposed factor; a summary of these comments, and FEMA's responses, follows.

Several commenters expressed concern that the use of fiscal capacity data would effectively penalize States with relatively greater fiscal capacity. Some comments expressed concern that because a high TTR is frequently correlated with a large state population (and correspondingly high operational expenses), the use of TTR could adversely impact States with larger populations. Along similar lines, one commenter suggested that the use of TTR with respect to California "would make it significantly more difficult for Californians to access individual disaster assistance" than residents of other states, because California's TTR is significantly higher than the TTR of other states. The commenter suggested that as a result of this significant disparity between States in TTR, as well as the diverse geography, disaster

vulnerability, and demographics of California, TTR "is too broad of a factor to provide a useful assessment of [the] statutory requirement for a state's capacity—let alone a local government's capacity—to manage a disaster."³ The commenter encouraged FEMA to "find a factor other than [TTR] that is better representative of both state and local resources available to each specific disaster."

FEMA notes that assistance provided by FEMA is intended to be supplemental in nature and FEMA must evaluate the fiscal capacity of the State to determine whether the State is overwhelmed or if the State has sufficient resources available to provide the needed disaster assistance without Federal assistance. FEMA's current approach, which largely relies on comparing level of damage to the population size of the affected State, essentially equates population with capacity. FEMA believes that a more direct way to evaluate a State's fiscal capacity is to use objective data such as U.S. Department of Treasury's TTR data or the Bureau of Economic Analysis' (BEA) GDP by State data. These are statistical measures of a State's economic activity, which can provide insight into changes in the general economic well-being of the State and its relative fiscal capacity. Although these measures are frequently strongly correlated with population size, they are more direct measures of fiscal capacity, and are therefore more appropriate for this purpose.

FEMA notes that any factor could be framed as a "penalty." The appropriate question is not whether any given factor operates as a penalty, but how such a factor relates to statutory requirements. Just as a State with ample fiscal capacity and resource availability could characterize as a "penalty" FEMA's determination that the State is able to use such capacity and resources to respond effectively to a disaster, a State that is struck by a relatively minor event could characterize as a "penalty"

³ Another commenter raised similar concerns with respect to the application of TTR to disaster declaration requests from Texas. The commenter wrote that "In a state as large and diverse as Texas, [TTR and GDP by State] don't truly represent the state's or an affected individual's ability to recover from a disaster without federal assistance." FEMA agrees that TTR and GDP by State do not represent affected individuals' ability to recover from a disaster without Federal assistance. Instead, FEMA uses other information to determine individuals' needs. What TTR and GDP by State represent is the affected State's capacity to assist those individuals with recovering from a disaster. TTR and GDP by State also provide a starting point for evaluating when the affected State is indeed overwhelmed and in need of supplemental Federal assistance to aid in providing assistance to individuals.

FEMA's consideration of the lack of damage. In either case, the denial would simply flow from the President's determination, consistent with statutory requirements, that the State and affected local governments should be able to respond to the disaster effectively without supplemental Federal assistance. In other words, all of the factors in this final rule are intended to allow FEMA and the President to make informed decisions regarding whether or not an event was of the severity and magnitude to be beyond State and local capability.

Commenters expressed concern that TTR data may not accurately capture the true fiscal capacity of a State because it calculates all of the things that a State could potentially tax, not what is actually taxed, and therefore may artificially inflate the perceived level of fiscal capability. Several commenters stated that FEMA should not consider a State's ability to pay based on potential revenues alone, without considering a State's expenses as well because it is a one-sided assessment of a State's capacity to respond and does not necessarily fully consider a State's ability to provide adequate disaster assistance. Another commenter observed that a State that has a high TTR because of a high population is likely to have correspondingly high expenses as well.

As discussed above, TTR is a value-neutral measure of a State's economic activity, which can provide insight into a State's relative fiscal capacity and changes in its economic wellbeing, regardless of the taxing choices and other constraints that may be imposed on it by State law, State constitution, or policy choices. TTR is also indicative of the overall economic and fiscal health of the people and the businesses within the State, which is relevant to the disaster impacted population's ability to recover (recognizing that there are poor communities in rich States and vice versa, FEMA will also consider per capita personal income at the local level).⁴ FEMA believes that States with a large TTR have a greater capability to respond to and recover from disaster events compared to States with a lower TTR. FEMA does not expect or require

⁴ FEMA anticipates using per capita personal income when the disaster effects are concentrated to a specific area. An example would be a tornado that hits a town in a rural area. FEMA would evaluate the State's overall TTR to gain insight into the State's ability to respond. FEMA also would evaluate the locality's per capita income to gain insight into that specific population's ability to respond, *i.e.* is the per capita personal income for that area sufficient to support an independent response? How will that affect the survivors' resiliency?

a State to exhaust its resources before supplemental Federal assistance would be appropriate. FEMA welcomes States to provide additional clarity on their fiscal capacity, and the fiscal capacity of local governments, by highlighting fiscal restrictions and expenditures that, though not captured in TTR, are relevant to the State and local government's capability to respond effectively to the disaster. In addition, FEMA fully recognizes that some disasters are so large and have such a serious impact that supplemental Federal assistance will be necessary no matter the State's available resources.

Several commenters expressed concern that the fiscal capacity indicators capture the fiscal capacity of a State before the event without considering that a State's economy may have been impacted by the disaster event. As part of FEMA's evaluation of a State's request, FEMA will evaluate the impact of the disaster on the State. If a State believes that the disaster has negatively and significantly impacted its fiscal capacity to respond or the overall State economy, the State may discuss such impacts in its declaration request.

Commenters expressed concern that the two-year lag in TTR data may result in the use of inaccurate data. Pursuant to Public Law 102-321, the U.S. Department of the Treasury produces annual estimates of total taxable resources (TTR) for all States. The TTR estimates are published by September 30th each year and have a two-year lag. For example, TTR for 2016 was published on September 28, 2018. The formula for calculating TTR uses Gross State Product (GSP)⁵ as its base, subtracts non-taxable components, then accounts for cross-border income flows. This calculation provides a "comprehensive measure of all the income flows a state can potentially tax."⁶ The two-year lag in TTR data is a direct result of when income data becomes available. Raw income data is always one year behind. Tax filings for any given year are generally due by April 15 of the following year.⁷ This accounts for the first lag year. The

⁵ The term Gross State Product (GSP) is used interchangeably herein with the term Gross Domestic Product for States (GDP by State). The U.S. Department of the Treasury uses the former, while the U.S. Department of Commerce, Bureau of Economic Analysis uses the latter. Published documents relating to TTR use GSP; thus, it is also used here.

⁶ "Treasury Methodology for Estimating Total Taxable Resources (TTR)," revised November 2002, page 2. <https://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf>.

⁷ IRS Publication 509—Main Content, General Tax Calendar, Topic: Individuals, Form 1040, <https://www.irs.gov/publications/p509/ar02.html>.

second lag year is attributable to putting the vast amount of data into a usable format.⁸

FEMA reviewed a ten-year data set of TTR for each State in response to comments on the two-year lag.⁹ Based on that review, FEMA found that TTR is sufficiently reliable to serve as the principal indicator for each State from which the discussion about fiscal capacity can begin. For the 10 years FEMA reviewed, TTR generally increased from year to year in every State. The exceptions, when TTR dropped, were generally due to circumstances that would have been readily apparent at the time. For example, nearly every State saw year-to-year drops from 2007–2008 and/or 2008–2009, coinciding with the financial crisis. While 2008 TTR data would not have been available to analyze for requests made during that time, FEMA and the States would have been well aware that capability and fiscal capacity among all of the States was decreasing, and FEMA would have been able to take that decreased capacity into consideration. In addition, events such as significant falls in certain commodity prices, which may impact one or two States as opposed to the entire nation, will also generally be apparent and supported by other readily available data at the time of the request. FEMA recognizes that there is a two-year lag and encourages each State to provide additional information about its fiscal capacity, especially if there have been noteworthy economic impacts during the two-year lag which impact the State's ability to respond to and recover from the disaster.

A commenter raised concerns that TTR is considered experimental and thus should not be used to evaluate a State's fiscal capacity. The U.S. Department of the Treasury's website includes three papers explaining the methodology it uses to estimate TTR.¹⁰

⁸ "TTR estimates for a given year will only be made when both GSP and SPI data are available for that year." "Treasury Methodology for Estimating Total Taxable Resources (TTR)," revised November 2002, page 5. <https://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf>.

⁹ The data set was comprised of the data contained in the TTR reports published between 09/26/2006 and 09/30/2015 (10 years of data). Although the reports are published and have titles ranging from 2006 through 2015, the data lags two years. For example, the report entitled "2006 Total Taxable Resources Estimates" was published on 09/26/2006 and contains TTR estimates for 2004.

¹⁰ The three papers explaining the methodology for calculating TTR are "Summary of Current Methodology for Estimating TTR," "Working Paper Review of Methodology for Estimating TTR," and "Summary of Previous Methodology for Estimating TTR." U.S. Dep't of the Treasury, Resource Center,

Each of these papers refers to an “experimental” methodology developed in 1986.¹¹ This “experimental” methodology was refined and finalized for use beginning in 1992.¹² In 1997, the methodology was substantially improved and in 1998 that improved methodology was implemented. The methodology has remained unchanged since 1998. Based on approximately 20 years of use, FEMA does not consider TTR “experimental” and believes TTR provides valuable insight into the fiscal capacity of States. Congress has recognized the utility of TTR by requiring its use in the formula used to allocate Federal funds for the Department of Health and Human Services’ Community Mental Health Service and Substance Abuse Prevention and Treatment block grant.¹³

A commenter asked that FEMA clarify the process it will use to determine when a State can rely on GDP data instead of TTR. The commenter also asked FEMA to explain more thoroughly how per capita personal income by local area would be analyzed with TTR and GDP to determine a State’s Fiscal Capacity. TTR is available for every State and FEMA will consider the relevant TTR for every State. If a State wants to use either GDP by State or Per Capita Personal Income data to supplement or highlight a differing fiscal health of the State then the State can submit the information to FEMA. However, FEMA will still consider TTR data for that request.

Several commenters expressed concerns about FEMA focusing too much on the fiscal capacity of States as compared to the fiscal capacity of local governments. One commenter raised the concern that taxable revenue and wealth in many States is not evenly distributed throughout and impoverished areas would be hurt if the State’s request for an IA declaration was judged by the overall state’s fiscal capacity. FEMA notes that the State is the one who makes the determination to apply for a major disaster declaration that the State needs supplemental Federal assistance. FEMA must evaluate at the State level

Total Taxable Resources, <https://home.treasury.gov/policy-issues/economic-policy/total-taxable-resources>.

¹¹ Carnevale, John, “Experimental Estimates of Total Taxable Resources, 1981–84,” in the Federal State-Local Fiscal Relations: Technical Papers, Vol. 2, Office of State and Local Finance, Department of Treasury, September 1986.

¹² “Summary of Current Methodology for Estimating TTR,” U.S. Dep’t of the Treasury, Resource Center, Total Taxable Resources, page 1, paragraph 2, <https://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf>.

¹³ 42 U.S.C. 300x–7.

because a request for a disaster declaration must 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 governments and that Federal assistance is necessary.¹⁴

Several commenters asked whether the “Fiscal Capacity” data will be shared with the States and expressed concern that they would be burdened by having to pre-identify their own Fiscal Capacity data. FEMA is planning on providing links on FEMA’s website to the data sources for States to easily access their own fiscal capacity data if they wish to review it prior to a major disaster request being made. In addition, the fiscal capacity data is easily found using a web search. The States will simply list their current fiscal capacity data in their request. As discussed above, States may also gather and provide additional information to supplement or provide further context to the specified data points.

A commenter asked how local area is defined for the “Per Capita Personal Income by Local Area” sub-factor of the “Fiscal Capacity” factor. The per capita personal income by local area data is produced by the Bureau of Economic Analysis for “counties, micropolitan statistical areas, metropolitan statistical areas (MSAs), metropolitan divisions (parts of MSAs), combined statistical areas, states, and the metropolitan and nonmetropolitan portions of states. Counties consist of counties and county equivalents, such as the parishes of Louisiana, the boroughs, municipalities and Census areas of Alaska, the District of Columbia, and the independent cities of Maryland, Missouri, Nevada, and Virginia. The estimates of Kalawoa County, Hawaii and the small independent cities of Virginia—generally those with fewer than 100,000 residents—are combined with estimates for adjacent counties.”¹⁵

Resource Availability.

The proposed Resource Availability factor called for FEMA to consider the availability of resources from State, Tribal, and local governments as well as non-governmental organizations and the private sector. The proposed rule identified the following sub-factors:

- State, Tribal, and local government; Non-Governmental Organizations (NGO); and private sector activity. State, Tribal, and local government, Non-Governmental Organizations, and

¹⁴ 42 U.S.C. 5170.

¹⁵ Local Area Personal Income and Employment Methodology, November 2017, “Geographic Detail,” page 1–7. <https://www.bea.gov/sites/default/files/methodologies/lapi2016.pdf>.

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

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

- State services. The State may provide information regarding the circumstances causing the State to lack the resources to provide sufficient services to its citizens.

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

FEMA received comments from 25 commenters regarding this proposed factor. The commenters stated that the proposed factor assumed the availability of volunteer and private sector resources that may not exist because voluntary and private sector resources vary from year to year based on donor funding; that FEMA should clarify the manner in which it will quantify potential resources of voluntary and faith-based organizations and limit the degree to which such resources will off-set Federal assistance; that FEMA should not limit the “Cumulative Effect of Recent Disasters” sub-factor to Presidential and gubernatorial disaster declarations, because such a limitation would result in States being unable to provide information on other types of Federal declarations that can show the level of recent hardship such as SBA, USDA, and Public Health Emergency declarations; that FEMA should better

define the “State Services” factor; and that the Resource Availability factor in general would force the States to develop a State-funded and administered IA program or be penalized in a State’s request for a major disaster declaration.

A number of commenters expressed concern that by considering the availability of volunteer and private sector resources, FEMA would assume the availability of resources that may not in fact exist, because voluntary and private sector resources vary from year to year based on donor funding and a State has no authority to direct NGOs or private organizations to provide funding or supplies post-disaster. In addition, commenters stated that it is difficult for States and communities to quickly assemble and report information about these resources in the immediate aftermath of a disaster, when impacted communities are in response mode. Commenters also asked FEMA to clarify how FEMA would request this data.

The current regulations at 44 CFR 206.48(b)(4) state that FEMA will consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims and this information is already provided as part of the narrative aspects of a State’s major disaster request for IA. The only new aspect of this factor, as compared to the current regulations, is a reference to private sector resources. While private sector resources were not previously specifically listed in the regulation, items such as significant private donations have always been relevant, and States have generally provided information on such donations when that information has been available at the time of the request. Assistance provided by State, Tribal, and local government, NGOs, and the private sector can include but is not limited to Emergency Management Assistance Compact (EMAC) resources, sheltering, housing programs, feeding, mental health services, child care, elder care, reunification services, clean up kits, blankets and cots, financial assistance, and other donations. To the extent that such resources are limited, unavailable, or otherwise unable to meet significant needs after a disaster, then the State should identify these limitations in its request, as that may indicate additional need for Federal assistance. FEMA understands that information will be imperfect after a disaster and all relevant data may not be immediately available. As is currently the practice, FEMA only asks that the State submit the best information reasonably available to it at the time of the request.

In addition, section 401 of the Stafford Act, conditions that a request for a major disaster declaration must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. 42 U.S.C. 5170; 44 CFR 206.36(a). In order for FEMA to evaluate whether a disaster is beyond the capabilities of a State and affected local governments, FEMA must evaluate what resources are available to the State and affected local governments.

This factor is also in keeping with the “Whole Community” approach to emergency management that reinforces the fact that FEMA is only one part of our nation’s emergency management team. Under the “Whole Community” approach, emergency managers must account for all available resources, including non-governmental resources, in preparing for, protecting against, responding to, recovering from and mitigating against all hazards. This approach recognizes that a government-centric approach to emergency management is not enough to meet the challenges posed by a catastrophic incident. When the community is engaged in emergency management, it becomes empowered to identify its needs and the existing resources that may be used to address them. The “Whole Community” approach is an ongoing component of the nation’s larger, coordinated effort to enhance emergency planning and strengthen the nation’s overall level of preparedness.

Commenters were concerned about FEMA limiting the Resource Availability factor related to past disaster declarations to only Presidential (both Public Assistance and Individual Assistance) and gubernatorial disaster declarations. The commenters stated that not all assistance provided by a State or its partners requires a gubernatorial declaration and there are other types of Federal declarations that can show the level of recent hardship endured by the State, such as a Small Business Administration Disaster declaration, United States Department of Agriculture disaster designation, and Department of Health and Human Services Public Health Emergency declaration. FEMA believes that taking information on past disaster activity and declarations is valuable, because multiple disasters in a 24-month period may significantly strain a State budget and reduce the State’s capability to adequately respond to and recover from a disaster without supplemental Federal assistance; this final rule therefore includes such a

factor. Consideration of recent disaster activity was previously only a consideration for a major disaster declaration that authorized Public Assistance. A State is always welcome to provide additional information beyond what FEMA is asking for in 44 CFR 206.48(b). If a State feels that recent disaster activity, as reflected in declarations through SBA, USDA, or HHS, have impacted their ability to respond to and recover from the event, then the State should include information on those declarations in their major disaster request for IA.

Several commenters expressed significant concerns with the “State Services” and “Planning After Prior Disasters” factors. The commenters felt that FEMA appeared to be forcing the States to develop a State-funded and State-administered IA program or else risk being penalized for the lack of such a program. The commenters stated that a State IA program is not required by the Stafford Act in order to receive supplemental Federal assistance. Several commenters asked whether FEMA is currently evaluating States’ limitations or shortfalls and communicating these with States. Also, States requested that FEMA clarify how it will determine that a State is or isn’t addressing limitations or shortfalls. Overall these commenters felt that the proposed rule did not adequately explain how FEMA would apply these two factors. Another commenter supported these factors, and urged FEMA “to also consider state effort to guard and mitigate against avoidable disaster damages, for example, with programs to regulate new development in flood hazard areas, adopt and enforce up to date state building codes, or incorporate resilience considerations into the location and construction of public infrastructure.” A comment expressed concern that the proposed rule “may unfairly penalize States that do not have robust IA programs.”

Based on the overwhelmingly negative response and after further review FEMA decided to remove the “State Services” and “Planning After Prior Disasters” sub-factors from the final rule. FEMA strongly believes States are ultimately responsible for the well-being of their citizens and that States have a responsibility to plan for disasters, pre-identify funding and resources, and to provide assistance to their citizens after a disaster. This should include the establishment, funding, and improvement of State-level individual assistance programs. However, FEMA has not been able to develop a methodology which would effectively and consistently evaluate the

State Services and Planning After Prior Disasters sub-factors to incentivize States to establish individual assistance programs or to plan and implement lessons learned from previous disasters. As a result, at this time, FEMA is unable to effectively incentivize these activities through the declarations process, and specifically in the evaluation of disaster requests. FEMA will continue to explore opportunities to encourage States to develop their own individual assistance programs.

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

The proposed Uninsured Home and Personal Property Losses factor included consideration of uninsured home and personal property losses, and identified the following sub-factors:

- The cause of damage.
- The jurisdictions impacted and concentration of damage.
- The number of homes impacted and degree of damage.
- The estimated cost of assistance.
- The homeownership rate of impacted homes.
- The percentage of affected households with sufficient insurance coverage appropriate to the peril.
- Other relevant preliminary damage assessment data.

FEMA received comments from 16 commenters regarding this proposed factor. The comments received were related mainly to concerns regarding the sub-factors related to the jurisdictions impacted and concentration of damages, the estimated cost of assistance, the homeownership rate of impacted homes, and the percentage of affected households with sufficient insurance coverage appropriate to the peril.

Several commenters were concerned that FEMA is not taking into consideration the effects of a disaster with widespread minimal damage spread across a large geographic area or the effects of a disaster on contiguous counties in different States. FEMA recognizes that as a practical matter, widespread minimal damage spread across a larger geographic area, can spread resources thin and overwhelm a State's capability to adequately respond to a disaster. This final rule continues to emphasize consideration of the estimated cost of assistance for a State; as a result, the true cumulative impact of the widespread minimal damage across a large geographic area within a State will continue to be considered by FEMA. Regarding the contiguous counties comments, the President will not declare a major disaster in an area that was not requested by a Governor

and a Governor cannot request areas that are not within his or her State's jurisdiction. FEMA will not designate areas of the State or types of assistance beyond those that the governor requests.¹⁶ In addition, each State and local government has different capabilities to respond to, recover from, and mitigate the effects of a disaster and a disaster that crosses State lines may have differing impacts in the affected States. As such, not every event that impacts multiple States will necessarily be beyond each affected State's respective capabilities. Therefore, FEMA must continue to base its major disaster declaration recommendation on the capability of the affected State and local governments to respond to the event, in accordance with the requirements for a major disaster declaration in Section 401 of the Stafford Act and 44 CFR 206.37.

Several commenters expressed concern that neither FEMA nor the States are able to utilize an accurate estimated cost of assistance at this time. One commenter stated that most metrics used by FEMA or the States are based on taking the number of individuals and households impacted and the extent of those impacts and damages, and multiplying those totals by the maximum assistance that is available through FEMA's IA programs. Commenters stated that the IA program has statutory limits on the amount of relief available and that maximum IA grant award is not indicative of the overall potential cost to make a family whole after a disaster and does not truly articulate the "whole community" resources that are needed to bring the community back to pre-disaster condition.

While FEMA recognizes that there are difficulties in accurately estimating the cost of assistance in the aftermath of an event, the estimated cost of assistance has to be part of the evaluation of whether a major disaster declaration authorizing IA is warranted because the cost of an event is an essential component in determining whether or not the disaster event is beyond the capabilities of a State. FEMA calculates the estimated cost of assistance at the conclusion of the Joint PDA and the estimated cost of the disaster is based on the data on uninsured damage to homes collected during the PDA. The calculation currently includes the following:

- Historical program costs for repair or replacement assistance for uninsured owner-occupied primary residences for each of the four dwellings assessment

levels—affected, minor, major, destroyed.

- Cost of providing temporary housing assistance based on the U.S. Department of Housing and Urban Development (HUD) fair market rent for the area of impacted owners and renters for each of the four dwelling assessment levels—affected, minor, major, destroyed—as well as for those dwellings that are now inaccessible because of the disaster.

- Historical program costs for ONA awards.¹⁷

When developing the estimated cost of assistance, because IHP repair and replacement assistance can only be awarded to homeowners, FEMA uses the homeownership rate to estimate the number of homeowners in the disaster affected area. Additionally, since IHP is only able to provide awards to uninsured individuals, FEMA also considers the number of insured versus the number of uninsured individuals when developing the estimated cost of IHP for the disaster.

In this final rule, FEMA is not prescribing the methods to be used to estimate cost of assistance. FEMA believes attempting to do so would be overly restrictive in a manner that would prevent FEMA from using new technology, such as geographic information systems (GIS), or otherwise updating the process, such as by updating the joint FEMA-State preliminary damage assessment instrument. FEMA is always working to improve the PDA process and methods of cost estimation. The estimated cost of assistance is necessarily limited by the maximum amount of IA grant award because the monetary amount of assistance that can be provided to individuals and households is limited by Section 408(h) of the Stafford Act.¹⁸ 42 U.S.C. 5174. FEMA recognizes that because of the statutory cap on the maximum IA assistance, in many situations FEMA assistance will not bring the survivor back to their pre-disaster position. States are always welcome to provide additional estimates of the total impact of the disaster on individuals and households,

¹⁷ Damage Assessment Operations Manual: A Guide to Assessing Damage and Impact, Page 59, Issued April 5, 2016 <https://www.fema.gov/media-library-data/1459972926996-a31eb90a2741e86699ef34ce2069663a/PDAManualFinal6.pdf>.

¹⁸ For disasters occurring in Fiscal Year 2019, the maximum amount of financial assistance provided to an individual or household under section 408 of the Stafford Act (IHP) with respect to any single emergency or major disaster is \$34,900. See 83 FR 53281, Oct. 22, 2018. This amount is adjusted annually based on the Consumer Price Index for All Urban Consumers as calculated by the Department of Labor, Bureau of Labor Statistics.

¹⁶ 44 CFR 206.40(b).

irrespective of the statutory caps, but in general, the estimated cost of assistance measure is useful to FEMA both for purposes of internal planning and for purposes of obtaining a preliminary (though sometimes incomplete) picture of total disaster impacts. To assist States, FEMA will share estimated cost of assistance data with the State throughout the PDA process, including final amounts.

One commenter expressed concern that U.S. Census data on the homeownership rate of impacted homes does not take into account that a renter may be occupying the owner-occupied home at the time of the disaster. In addition, some commenters stated that the homeownership rate is not readily available during preliminary damage assessments and the amount of time required to make a reliable estimate would cause delays in States' submitting their major disaster declaration requests. FEMA notes that this data point is used during the current process and estimates are available via Census.¹⁹ Estimates of homeownership rates are important because the level of needed assistance varies between rentals and owner-occupied residences. Renters typically do not require repair assistance because repairs are generally the responsibility of the landlord and the property must be owner occupied to be eligible to receive IHP assistance for repair or replacement. In addition, as part of the PDA process, FEMA, along with State and local partners, canvasses the disaster-impacted areas to validate the Census data on renters. As with all data points, States should submit, and FEMA will base its recommendation on, the best information available at the time.

A commenter suggested adding a data point that compares the known homeowner insurance population with the actual population of a particular county or parish. The commenter stated that many rural residents who sustain damages from a disaster may not have homeowners insurance if they do not have a mortgage. FEMA notes that we do not prescribe the specific method of how to calculate the insurance penetration rate in this final rule but we will use the best method available. At this time, PDA teams may consider any relevant factors in estimating the insurance rate for the affected

households, which may include, among other considerations, whether the affected area was rural, suburban, or urban.

A commenter suggested comparing the average amount of homeowner insurance deductible in a given county or parish against the income for such county or parish, because often insurance deductibles are too high for residents to pay out of pocket after a disaster. In addition, a homeowner who cannot afford to pay the deductible will be unable to fully recover after the disaster. FEMA notes that the issue of high insurance deductibles has arisen in the past, often in earthquake events. FEMA considers a homeowner with a high deductible to be underinsured. States may provide information on deductible rates for the peril in the affected area and FEMA will utilize that information when evaluating the sufficiency of the insurance coverage in place and determining the number of underinsured homeowners who may require Federal assistance. FEMA did not make any changes based on this comment.

A commenter stated that FEMA seems to believe that every Insurance Commissioner's Office keeps a record of every single policy issued in the State, along with limits, exclusions, and types of coverage. The commenter stated that they have never heard of a State Insurance Commissioner's Office that has access to such a database. FEMA fully recognizes that the availability and quality of insurance data varies widely from State to State. Some State Insurance Commissioner's Office have information that can be utilized to provide or contribute to estimates of insurance coverage. For certain States, the best option may be the State Insurance Commissioner's Office, but for other States it may be a different source. FEMA notes that it is important to develop an insurance coverage estimate because, under Section 320 of the Stafford Act (42 U.S.C. 5155), FEMA is statutorily prohibited from duplicating insurance coverage. If the vast majority of damage will be covered by insurance, a Presidential declaration may be unnecessary. As stated previously, States should make their requests based on the best information available to them at the time. In the final rule, FEMA has not prescribed a specific source for this data, because currently available sources have variable coverage, and more complete sources may become available in the future.

One commenter recommended adding a data point to capture the number of uninsured or underinsured losses from individuals who were required to carry

flood insurance as a result from previously accepting disaster assistance. FEMA does access this information during a disaster by looking at National Flood Insurance Program data. FEMA already considers this information when looking at the insurance component and we view it as a consideration that exists implicitly within the insurance coverage data point of the final rule.

A commenter raised concerns that the amount of time it would take to determine damages, insurance, and specific insurance riders regarding whether specific disaster damages are covered would make the 30 day window to request a major disaster declaration for IA unattainable. FEMA does not expect the States to provide an unreasonable level of detail or specificity for the insurance data point. FEMA expects a State to provide the best estimate of data within the time frame available. A State should make their major disaster declaration request in the timeframe appropriate to the size and impact of the event and should not delay in order to gather additional information, even if such information would be more precise or useful.

A commenter stated that although they are encouraged that FEMA plans to pursue better data to inform its insurance penetration rate determinations, they raised concerns that FEMA previously promised to identify alternative insurance data sources in the past but has made little progress. FEMA continues to work to find the best information regarding insurance coverage and is committed to finding the most thorough and accurate sources for insurance data. However, at this point, such thorough and accurate sources either do not currently exist or are not currently available to FEMA. As such, FEMA cannot prescribe the method or source for obtaining insurance data in this final rule because we anticipate that there will be better methods in the future. FEMA has not made any changes based on this comment.

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

The proposed Disaster Impacted Population Profile factor related to the demographics of impacted communities, and identified the following data points as sub-factors:

- The percentage of the population for whom poverty status is determined.
- The percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits.

¹⁹The Census Housing Vacancies and Homeownership website provides current information on homeownership rates and are available for the U.S., regions, states, and for the 75 largest Metropolitan Statistical Areas (MSAs). Data for all geographies are available both quarterly and annually. <https://www.census.gov/housing/hvs/index.html>.

- The pre-disaster unemployment rate.
- The percentage of the population that is 65 years old and older.
- The percentage of the population 18 years old and younger.
- The percentage of the population with a disability.
- The percentage of the population who speak a language other than English and speak English less than “very well.”
- Any unique considerations regarding American Indian and Alaskan Native Tribal populations raised in the State’s request for a major disaster declaration that may not be reflected in the data points referenced in paragraphs (b)(3)(i)–(vii) of this section.

FEMA received comments from 8 commenters regarding this factor. The commenters stated that consideration should be given to non-citizen populations that are affected by a disaster; that although special populations were already a factor of consideration, the expansion of this into 8 data points would be burdensome on States during response activities; that the proposed disaster impacted population data points would provide a better overall understanding of the community impacted and the resources needed; and that the proposed disaster impacted population profile data points are to be commended because the factor would better highlight the severity of impact to the community.

Two commenters stated that in the Commonwealth of the Northern Mariana Islands, they face extenuating and unique situations because they have a relatively large population of aliens as compared to U.S. citizens and nationals. The commenters asked that FEMA consider allowing direct financial support for that specific population. FEMA is statutorily prohibited from providing certain types of Federal assistance to aliens who are not qualified aliens.²⁰ Specifically, recipients of IHP and DUA must certify that they are U.S. citizens, non-citizen nationals of the United States, or qualified aliens. That prohibition is statutory and it cannot be altered through this final rule.

A commenter raised concerns that the proposed rule did not include any requests for information on indigent populations. FEMA notes that the proposed rule included a number of such requests, including specific sub-factors seeking information on the

percentage of the population for whom poverty status is determined and the percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits. If a State believes, based on the circumstances of a disaster event, that there is additional population-related information that needs to be considered, the State should include such information in its request for a major disaster declaration authorizing IA.

A commenter stated that, although special populations were already a factor of consideration, the expansion of this into 8 data points would be burdensome on States during response activities. FEMA notes that the State is not required to provide any of these data points. If the State wishes to provide such data points, they are publicly available.²¹ States commonly provide

²¹ Poverty data comes from the U.S. Census Small Area Estimate Branch, “Poverty and Median Income Estimates for Counties.” Supplemental Nutrition Assistance Program data is from the U.S. Census’s American Community Survey (ACS) using the American FactFinder (<https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>), Advanced Search, Geographies: “All Counties within the United States,” Topics: S2201, 5-year estimates. Supplemental Security Income data comes from ACS using the American FactFinder, Advanced Search, Geographies: “All Counties within the United States,” Topics: B19056, 5-year estimates. The unemployment data at the State and county level are available at <https://www.bls.gov/lau/>. Data on county populations of “65 or Older” and “18 or Younger” data comes from the ACS using the American FactFinder (<https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>), Advanced Search, Geographies: “All Counties within the United States,” Topics: DP05, 5-year estimates. Data on populations with a disability comes from the ACS, American FactFinder (<https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>), Advanced Search, Geographies: “All Counties within the United States,” Topics: S1810, 3-year estimates. Data on “percent of population who speaks English less than very well” comes from the ACS, American FactFinder (<https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>), Advanced Search, Geographies: “All Counties within the United States,” Topics: B06007, 5-year estimates. Data on American Indian and Alaska Native populations comes from the ACS, American FactFinder (<https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>), Advanced Search, Geographies: “All Counties within the United States,” Topics: DP05, 5-year estimates. FEMA may update these sources to account for future improvement and changes in the U.S. Census, BLS, BEA, and Treasury data reporting, and the sources are provided here for example.

For definitions related to demographic data points, please refer to the associated organizations websites. For example, refer to U.S. Census Small Area Income and Poverty Estimates definitions at <https://www.census.gov/topics/income-poverty/poverty/about/glossary.html> for percentage of the population for whom poverty status is determined. For a definition of the pre-disaster unemployment rate, refer to Bureau of Labor Statics at <http://www.bls.gov/bls/glossary.htm> and search for the term “unemployment rate”. The U.S. Census glossary at <http://www.census.gov/glossary> and

these data points to FEMA as part of a declaration request; FEMA is merely clarifying a common source for these data points going forward. The disaster impacted population profile data points can be found by the State prior to a disaster even occurring and will only need to be pulled once a year.

Two commenters noted that the proposed rule changes added several very beneficial factors, including the additional components to the Disaster Impacted Populations profile, the Impact to Community Infrastructure, and the separate consideration for Disaster Related Unemployment. The commenters stated that these proposed factors would better highlight the severity of a disaster’s impact to the community and would provide a better overall understanding of the community impacted and the resources needed. The commenters also stated that the proposed factors would facilitate a more nuanced understanding and approach to the unique recovery needs of communities in the aftermath of a disaster.

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

The proposed Impact to Community Infrastructure factor related to certain impacts to a community’s infrastructure that may adversely affect a population’s ability to safely and securely reside within the community. The proposed rule identified the following sub-factors:

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

American Community Survey also provide definitions related to demographic data points including the following terms: Assistance and Subsidies, Age, Disability, Language Spoken at Home, and Ability to Speak English.

²⁰ The Personal Responsibility and Work Opportunity Reconciliation Act Of 1996, Title IV, Public Law 104–193, 110 Stat. 2105 (Aug. 22, 1996). See 8 U.S.C. Chapter 14—Restricting Welfare and Public Benefits for Aliens, 8 U.S.C. 1611–1646.

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

FEMA received comments from 9 commenters regarding this proposed factor. The commenters asked for more information regarding how FEMA expects States to provide this information; suggested that the additional requested data would be burdensome to collect; and requested that FEMA elaborate on the scope of the “Impact to Community Infrastructure” factor to include the effects of a cyber-event or other evolving threat.

The information included in the “Impact to Community Infrastructure” factor is already typically provided, where relevant, in States’ major disaster declaration requests for IA. States typically identify any critical infrastructure disruptions in their major disaster declaration requests for IA because it illustrates the impact of the disaster on the community as whole. FEMA recognizes that communication may be difficult after a disaster, and FEMA expects that State and local officials will provide the best information they have. None of this information is required, if the State does not wish to provide it. The information for major disaster declaration requests for IA is often based on initial assessments that allow both the State and FEMA to evaluate the situation. FEMA currently encourages States to do the IA PDA before the PA PDA, and encourages States to submit their requests even if they are still awaiting the completion of the PA PDA.

A commenter raised concerns that the proposed “Impact to Community Infrastructure” factor could potentially lead to a disaster declaration that traditionally would be a PA-only major disaster declaration to now be an IA major disaster declaration as well. In addition, a commenter expressed concern about how the States would collect and deliver this information because many disaster events only receive a joint FEMA-State PDA for either PA or IA. As noted in the proposed rule, the “Impact to Community Infrastructure” factor is intended to help FEMA evaluate the disaster impacts on infrastructure and how it may affect the individuals in that

community. PA PDA teams conduct assessments to estimate the costs to repair and replace infrastructure, but a major disaster declaration request for IA would not require that level of detail. For IA, FEMA is not evaluating how much it will cost to fix a bridge that was washed out during a flood; however, FEMA believes it is important to know how many people are impacted because that bridge is now unavailable. A bridge that is washed out could severely impact an individual’s ability to remain in their home or to travel to and from work, which would necessitate IA.

A commenter raised that FEMA should expand the scope of the “Impact to Community Infrastructure” factor to ensure that application of the Stafford Act evolves at the pace of real-world threats, to include the effects of evolving threats, such as cyber-attacks. FEMA encourages planning and preparing for potential cyber-attacks. FEMA believes that the final rule is flexible enough to allow FEMA to evaluate whether IA programs would be appropriate and necessary following a cyber-event that affected individuals and households. It is important to note that some FEMA programs may not be well suited to address damage caused by cyber events and other evolving threats, and not all such events or threats will result in eligibility for a Stafford Act declaration.

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

The proposed Casualties factor related to the number of individuals who are missing, injured, or deceased due to a disaster. FEMA received comments from 4 commenters regarding this proposed factor. The commenters noted that the change for this factor was an increase in specificity in the regulation because the proposed factor included a request for information on missing individuals in addition to injured and deceased individuals. In addition, commenters felt that a lack of casualties should not be used by FEMA to deny a major disaster declaration request for IA. FEMA has made no changes to the “Casualties” factor in the final rule from what was proposed in the proposed rule. Data on the number of missing, injured, and deceased are currently provided by the State to FEMA and FEMA is clarifying in regulation the continued need for these data points. Casualties, or a lack thereof, will never be the only factor considered in a major disaster declaration authorizing IA determination. However, there may be events with borderline levels of damage to residences, but with a high number of casualties that point to a level of trauma warranting Federal assistance.

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

The proposed Disaster Related Unemployment factor called for consideration of the number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance. The proposed factor welcomed States to provide an estimate of the number of such unemployed disaster survivors as well as information regarding major employers affected.

FEMA received comments from 8 commenters regarding this proposed factor. Some commenters applauded the proposal to continue to collect this information. Others expressed concerns that a State may not be able to gather the requested unemployment data within the 30 day declaration request period. Some commenters stated that a State typically uses potential disaster unemployment claims for a USDA agriculture related disaster request but adding this information to a major disaster request for IA may be worth the time and resources when many businesses are impacted. Others stated that FEMA should not use potential low level of unemployment claims due to a major disaster as a negative factor against a State in determining whether a declaration is warranted.

FEMA understands that there are certain disaster situations where gathering certain types of information may be difficult. This information may not be necessary or relevant for the typical major disaster declaration request that is seeking IA. Generally, when a disaster event warrants IA, Disaster Unemployment Assistance is appropriate as well. This information is already provided by States when they request Disaster Unemployment Assistance as part of their major disaster declaration request. If needed, States may submit extension requests. This factor will primarily be relevant in instances where the effect of the disaster event is mainly economic and Disaster Unemployment Assistance is the only program that a State requests. FEMA will not use a low level of unemployment claims due to a major disaster as a negative factor in determining whether a request for other forms of disaster assistance is warranted. However, a low level of unemployment claims due to a major disaster may be indicative that Disaster Related Unemployment is unnecessary even though other IA programs are necessary to assist a community recover post-disaster event.

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

FEMA proposed that the principal factors it will consider in evaluation of any major disaster declaration request for IHP will be the fiscal capacity of the requesting State (44 CFR 206.48(b)(1)(i)) and the uninsured home and personal property losses (44 CFR 206.48(b)(2)). FEMA found that the ratio of IA Cost to Capacity (ICC), which is the estimated cost of IA divided by a State's TTR in millions, was particularly indicative of the likelihood of a declaration. FEMA received comments from 4 commenters regarding this proposal. The commenters expressed general opposition to FEMA using the ICC calculation as an evaluation tool for whether IHP is warranted and suggested that the ICC calculation is a mathematical formula or "threshold" that is prohibited by the Stafford Act.

A commenter stated that the ICC calculation proposed by FEMA for determining whether IHP is warranted is a mathematical formula that is specifically prohibited by the Stafford Act. The commenter stated that the formulaic evaluation of a major disaster request does not meet the spirit and intent of the Stafford Act. Section 320 of the Stafford Act prohibits the denial of assistance to a geographic area based solely on the use of an arithmetic formula or a sliding scale based on income or population. 42 U.S.C. 5163. The ICC ratio compares the estimated cost of assistance and the State's TTR. Although the ICC ratio is an arithmetic formula based in part on income flows, FEMA does not plan to deny assistance to any geographic area based solely on the results of this formula. Rather, the results are only one factor (albeit an important one) that FEMA will consider, in the totality of the circumstances, when making its recommendation to the President. The comparison of the principal factors will be considered in conjunction with the other factors that are provided in the final rule. FEMA has revised the regulatory text at 44 CFR 206.48(b) to make clear that FEMA will always consider all relevant information submitted as part of a declaration request.

FEMA believes that it is appropriate to use ICC as a measure of the need for IHP because at its core, the determination of whether to recommend a major disaster declaration authorizing IHP depends on the impact of the event being beyond a State or local government's capability. Such a determination necessarily entails an

assessment of the impact of the event in the context of a State's fiscal capacity and resources. FEMA recognizes that every disaster is different and circumstances vary among States. Ultimately, however, the ICC compares two factors that are undeniably relevant to FEMA's recommendation to the President. These factors will not be used to the exclusion of all others; FEMA will continue to evaluate each request on its own merits, including by reference to the other factors identified in this rule.

A commenter opined that although FEMA states that the ICC is not a hard threshold, the practical result is that of a threshold. FEMA does not agree that the ICC will act as a threshold. The ICC statistics provided in the NPRM were based on historical declaration requests and they show levels of ICC for events that were approved at a high frequency, denied at a high frequency, and for events that fell in the middle. FEMA believes the ICC evaluation provides a more systematic way to look at the information and creates a more useful decision framework to evaluate a major disaster declaration request for IA than the current evaluation process. FEMA provided this historical data to help guide States for planning in future disaster situations, and FEMA will continue to update this data based on major disaster declaration request determinations in the future. FEMA is not planning to use the ICC calculation as a hard "threshold."

H. Lack of Thresholds

FEMA received comments that expressed disappointment at a lack of clear thresholds or other guidance regarding what amount of damage would definitively warrant a major disaster declaration authorizing IA. FEMA will not be using a threshold because it would unnecessarily limit FEMA's ability to advise the President and would not allow FEMA to fully consider all factors that may be relevant for the unique circumstances of a disaster and its impact on the State. FEMA understands that some States prefer additional clarity for planning purposes, *i.e.*, to help States decide whether they should or should not submit a major disaster declaration request for a given disaster event. While FEMA will not be establishing a threshold, FEMA issued an additional proposed guidance document for comment on September 22, 2016 at *81 FR 65369* that further fleshed out the details of how FEMA will evaluate the factors. Following consideration of the comments received, FEMA is issuing the final guidance today; a notice of availability regarding that guidance

document is published elsewhere in today's **Federal Register** along with this final rule. In addition, FEMA will periodically publish aggregate PDA data on FEMA's website which States can use to evaluate the likelihood of receiving a major disaster declaration for a specific event and to plan for future events.

I. IA Declarations Factors Guidance

Several commenters raised concerns regarding the *IA Declarations Factors Guidance* which FEMA indicated would support the proposed rule. The commenters asked for information on when the guidance would be published, wanted clarity on how the factors will be weighted, and suggested that FEMA should develop appropriate guidance materials to train State and local partners, FEMA regional office staff, and the disaster workforce. FEMA published an additional proposed guidance document for comment on September 22, 2016 that further fleshed out the details of how FEMA would evaluate the factors. *81 FR 65369*. The majority of comments received on the proposed guidance document were duplicative of what was already received on the proposed rule. The comments that were unique and specific to the guidance are addressed in the final *IA Declarations Factors Guidance*, notice of which is published elsewhere in today's **Federal Register** along with this final rule.

Commenters asked for clarity on how the factors would be evaluated by FEMA. As stated above, FEMA intends to provide additional clarity regarding evaluation of the factors through guidance documents. These guidance documents will aid States and Territories in drafting requests for emergency and major disaster declarations including Individual Assistance. These documents will also provide additional clarity regarding the circumstances, in particular the severity and magnitude relative to State capacity, under which a major disaster declaration authorizing IA is likely to be approved or denied. This additional clarity should allow for improved planning by the States because they will have a better understanding of what type and size of event may exceed their capacity to support residents without Stafford Act assistance.

A commenter stated that FEMA should develop appropriate guidance materials to train State and local partners, FEMA regional office staff, and the disaster workforce. FEMA has hosted and will continue to host internal and external trainings and webinars for the FEMA Regional Offices, States, Territories, and local

partners to help them become familiar with and understand the new IA major disaster declaration factors.

J. Preliminary Damage Assessments

Several commenters raised concerns regarding the preliminary damage assessment process. The concerns raised include that nongovernmental organizations (NGOs) should be invited to participate in sharing information during the PDA process and initial response and recovery; that FEMA should simplify the PDA process for IA and coordinate with the Red Cross and Small Business Administration (SBA); that the timeframe for making a major disaster declaration for IA is unclear; and that a PDA conducted too early in certain events, such as a flooding disaster, will not result in accurate PDAs.

A commenter raised a concern that non-governmental organizations need to be invited to participate in sharing information during the PDA process and initial response and recovery. FEMA notes that non-governmental organizations are often involved in the disaster response in a community and provide information to the States. A State may coordinate with their local non-governmental organizations and to involve them in the PDA process, at the State's discretion.

Two commenters suggested that FEMA, SBA and the American Red Cross should develop a single standardized PDA that would collect one set of data that all three entities can use. In general, FEMA believes that a wholesale revision of the PDA process is outside the scope of this rulemaking. Aside from revising a limited number of data points, this final rule does not affect the PDA process at all. In addition, FEMA and SBA currently do coordinate and complete PDA together when feasible.

A commenter requested clarity about the deadline by which a State must request a major disaster declaration authorizing IA. States must submit their major disaster request (or request an extension) within 30 days of the incident. 44 CFR 206.36(a). FEMA encourages States to identify the potential need for a joint FEMA-State PDA as quickly as possible if the State believes that a major disaster declaration is necessary. FEMA encourages States to collect and submit information as quickly as possible because it is important to provide assistance to disaster survivors as soon as possible after a disaster event.

A commenter stated that FEMA must recognize that a PDA performed too early, particularly after a flood event,

will not provide an accurate measure of the number of homes damaged. FEMA notes that a State is the entity that triggers the joint FEMA-State PDA, and that a State may request an extension of the 30 day deadline if additional time is needed to provide accurate results. For any major disaster declaration request including IA, FEMA will work with the State to complete the PDAs and process the declaration request as quickly as possible. FEMA will make a major disaster declaration recommendation to the President based on the best information available and we recognize that early after an event not all of the information is available or completely certain. FEMA also recognizes that the magnitude of some events may require the State and FEMA to move ahead based only on limited or uncertain information.

K. Amount of Data Requested

Several commenters raised concerns that the proposed rule would create a significant increase in the amount of data required for a State's request for a major disaster declaration authorizing IA. The commenters shared that, although it is appreciated that States are being forewarned of these requirements in advance, they felt that many of the new data points would require significant effort to assemble which may impact expediency in submitting a major disaster request which is in direct contradiction to section 1109 of SRIA's requirement to "speed a declaration of a major disaster." In addition, others raised concern that under the proposed rule, FEMA would require the States to compile a significant amount of information, regardless of whether such information had any bearing on whether a declaration will be declared.

FEMA notes that most of the data points identified in the proposed rule are already provided by States as part of the current disaster declaration process because they are items that FEMA informally identified as relevant data points in the past. By clearly identifying these data points up front, the final rule will reduce the potential that FEMA will need to reach back to the State for additional information. In this way, FEMA believes that the rule will help speed the process. In addition, FEMA is not compelling the States to provide all of the data points included in this rulemaking. A State should submit enough information that they believe justifies the need for supplemental Federal assistance. However, it is in the State's interest to discuss the data points highlighted in this rule along with any other relevant information because it will illustrate to FEMA and the

President why supplemental Federal disaster assistance is necessary for their State.

IV. Final Rule

FEMA is finalizing the proposed rule with the two changes that are discussed in section III of this preamble. First, FEMA is removing the proposed "State Services" sub-factor. Second, FEMA is removing the proposed "Planning After Prior Disasters" sub-factor. FEMA has also revised introductory text at 44 CFR 206.48(b) to make clear that regardless of the ratio of estimated cost of assistance to TTR for any given event, FEMA will always consider all relevant information submitted as part of a declaration request.

V. Regulatory Analysis

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

1. Executive Summary & A-4 Accounting Statement

Executive Orders 13563 ("Improving Regulation and Regulatory Review") and 12866 ("Regulatory Planning and 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 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 a "significant regulatory action" although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the 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 estimates the final rule will impose a cost burden of \$28,040 in the first year of implementation and \$2,939 for each subsequent year. FEMA estimates the ten-year present value total cost to be \$44,102 discounted at seven percent and \$49,441 discounted at three percent. FEMA estimates the annualized cost of the final rule to be \$6,279 at seven percent and \$5,796 at three percent.²² The costs are for training (FEMA providing and States participating in), States becoming familiar with the regulation, both FEMA and States downloading and saving annual data, and States changing their existing files to account for the new

factor. Benefits of the rule include clarifying FEMA’s existing practices and reducing process time and effort (back and forth) between FEMA and States requesting a declaration.

FEMA does not expect the rule to affect the amount of assistance to individuals and households for two primary reasons. First, codifying factors that are currently captured under the “other relevant information” prong of 44 CFR 206.48 provides clarity without necessarily changing current practice. Since 1999,²³ FEMA has evaluated and improved its IA declarations practices continuously so that FEMA can incorporate consideration of new

information sources as they have become available. This rule reflects the evolution of those efforts by codifying currently used factors, as well as adding one new factor to evaluate the fiscal capacity of States’ abilities to respond to and recover from a declared disaster. Second, the new fiscal capacity factor is highly correlated to previously captured data on State population²⁴ and is expected to result in comparable declaration recommendations. FEMA believes including the new fiscal capacity factor provides a more comprehensive picture of a State’s ability to respond to and recover from a declared disaster.

TABLE 1—A-4 ACCOUNTING TABLE

Category	Estimates			Units		
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate (%)	Period covered
Benefits:						
Annualized Monetized	n/a	n/a	n/a	n/a	7	n/a.
	n/a	n/a	n/a	n/a	3	n/a.
Annualized Quantified	n/a	n/a	n/a	n/a	7	n/a.
	n/a	n/a	n/a	n/a	3	n/a.
Qualitative	The final rule more clearly identifies declaration factors FEMA considers when making its recommendation to the President on a major disaster declaration that authorizes IA than current regulations. The rule codifies factors FEMA currently considers, but are not specified in 44 CFR 206.48(b) and adds one new factor that will provide additional information on fiscal capacity. FEMA anticipates that this final rule will result in regulatory efficiencies due to reduced back and forth between FEMA and the State that is requesting the declaration. Currently, the amount of back and forth between FEMA and the State is not tracked.					
Costs:						
Annualized Monetized	\$6,279	n/a	n/a	2015	7	10 years.
	\$5,796	n/a	n/a	2015	3	10 years.
Annualized Quantified	n/a	n/a	n/a	.....	7	10 years.
	n/a	n/a	n/a	.....	3	10 years.
Qualitative	None.					
Transfers:						
Federal Annualized Monetized	n/a	n/a	n/a	n/a	7	n/a.
	n/a	n/a	n/a	n/a	3	n/a.
From/To	From:	n/a		To:	n/a.	
Other Annualized Monetized	n/a	n/a	n/a	n/a	7	n/a.
	n/a	n/a	n/a	n/a	3	n/a.
From/To	From:	n/a		To:	n/a.	
Effects:						

²² FEMA includes estimates of discounted present value costs and annualized costs according to guidance from OMB Circular A-4. Office of Management and Budget, Published September 17, 2003. Available at: <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf>.

²³ On September 1, 1999, 44 CFR 206.48 was finalized in regulation. See 64 FR 47698.

²⁴ The correlation is based on the new fiscal capacity sub-factors. The primary sub-factor that will be used is Total Taxable Resources (TTR), which measures the unduplicated sum of the income flows produced within a State and income

flows received by *its residents* that a State can potentially tax. See United States Department of the Treasury, “Treasury Methodology for Estimating Total Taxable Resources (TTR),” Revised November 2002, page 2, <https://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf>. Accessed and downloaded November 9, 2015. Because TTR is available at the State level only, Gross Domestic Product (GDP) by State will be used as the fiscal capacity indicator for territories and other areas when TTR is not available. In general, GDP by State is estimated using two procedures. The first one uses State-level Census Bureau value-added data for goods-

producing industries to estimate GDP by State for those industries. The second procedure uses Census Bureau receipts and payroll data, or company financial data to estimate gross operating surplus for the services-producing industries. Both procedures use income received by a State’s residents as a primary component. See *United States Department of Commerce, Bureau of Economic Analysis, “GDP by State Estimation Methodology,”* page 2, https://www.bea.gov/sites/default/files/methodologies/0417_GDP_by_State_Methodology.pdf. Accessed and downloaded February 15, 2017.

TABLE 1—A—4 ACCOUNTING TABLE—Continued

Category	Estimates			Units		
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate (%)	Period covered
State, Local, and/or Indian Tribal Governments	State governments are the only entities directly affected by this rule. Benefits include expected regulatory efficiencies due to reduced back and forth between FEMA and the State requesting the major disaster declaration that includes IA.					
	Increased costs resulting from the rule are from training, becoming familiar with the new rule, downloading the fiscal capacity factor data, and changing existing templates and files to account for the new factor. These costs are expected to occur in year 1. Costs in subsequent years from updating the data are expected to be small.					
Small Business				No Impact.		
Wages				Not Measured.		
Growth				Not Measured.		

2. Need for Regulatory Action

This final rule provides clarity on the declaration factors that FEMA currently considers in support of its recommendation to the President on whether a major disaster declaration authorizing IA is warranted. FEMA expects the additional clarity will reduce delays in the declaration process by decreasing back and forth between States and FEMA. FEMA also is adding one new factor—Fiscal Capacity—to provide additional context on States’ capacity to respond to and recover from disaster situations. Finally, the rule will satisfy the requirements outlined in Section 1109 of SRIA.

3. Affected Population

A request for a Federal major disaster declaration authorizing IA must come from a State’s Governor or designated equivalent. 44 CFR 206.36(a). Therefore, the rule directly affects all States that are eligible to request a Federal major disaster declaration authorizing IA. States are defined in 44 CFR 206.2(a)(22) and include any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.²⁵

Although Section 1110 of SRIA amended the Stafford Act to allow federally recognized Indian Tribal governments to submit requests for emergency or major disaster declarations, SRIA charged FEMA to implement that authority separately by rulemaking. Declarations requested by Tribal governments will be covered by

²⁵ There are 56 States, as defined by 44 CFR 44 CFR 206.2(a)(22). Throughout this analysis, “States” means the total number of governmental jurisdictions that include the 50 U.S. States, District of Columbia, and the 5 territories listed.

a separate process and are not included in this rule. For this reason, Tribal governments are not directly affected by this rule. Local governments also are not directly affected by the rule because the disaster-related information local governments provide to the State is part of their current disaster response process, which is to provide situational awareness and ascertain the need for further emergency assistance.²⁶

4. Current Baseline and Impacts of Final Rule

The rule largely codifies many considerations that FEMA has used for several years under the “other relevant information” prong of 44 CFR 206.48, but were not specifically identified in FEMA regulations. FEMA conducted a retrospective review of State major disaster declaration letters that requested IA and found that States typically included more information and data than what is specifically identified in the current regulations and listed at 44 CFR 206.48(b).²⁷

²⁶ The National Response Framework defines the roles and responsibilities of key partners at the local, tribal, State, and Federal levels. Local governments/jurisdictions are responsible for ensuring the public safety and welfare of their residents. Local police, fire, emergency medical services, public health and medical providers, emergency management, public works, environmental response professionals, and other in the community are often the first to detect a threat or hazard, or respond to an incident. As first responders, local governments provide situational awareness on the incident and request immediate emergency relief to ensure public safety and welfare, i.e. debris removal and/or emergency protective measures. See National Response Framework, Third Edition, pages 11–12, https://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf. Accessed and downloaded February 15, 2017.

²⁷ FEMA reviewed all 85 State major disaster declaration request letters submitted between January 1, 2012 and December 31, 2016, and found

FEMA’s review examined the 85 major disaster declaration requests for IA that States submitted between January 1, 2012 and December 31, 2016. All were examined, whether the declaration was granted or denied. FEMA found that the four new Fiscal Capacity sub-factors had not been provided previously by States; however, when States provided qualitative information on the State’s economic health, they may also have provided median household income. FEMA found that out of the remaining 23 sub-factors, 19 were provided in at least 80 percent of the requests and only 4 were provided in less than 20 percent of the request letters. All 4 are sub-factors of the Disaster Impacted Population Profile factor. Specifically, the percentage of population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Program benefits appeared in only 5 percent of the requests (4 occurrences in 85 total requests); the percentage of the population who speak a language other than English and speak English less than “very well” in only 7 percent of the requests (6 occurrences in 85 total requests); the percentage of population 18 years old and younger in only 18 percent (15 occurrences in 85 total

that each letter was unique and provided many of the data points and information that will be explicitly included under the regulation. The information submitted varied depending on the disaster, the scope of damages, and the need for assistance. FEMA does not require every data point to be submitted when a State makes a declaration request. FEMA found that some requests had more data and/or information, while other requests had less. For instance, in more severe events in less resilient areas, the States did not need to provide a large amount of information to be recommended for a declaration. In these instances, the individual assistance needs were clearly outside the capacity of the requesting State.

requests); and any unique considerations regarding American Indian and Alaskan Native Tribal populations that may not be reflected in the U.S. Census Bureau data in only 18 percent of the requests (15 occurrences in 85 requests). FEMA found that these specific sub-factors of population were specifically included by States when they believed the disaster adversely affected and heightened the vulnerability of these particular segments of the population. This is consistent with FEMA's long-standing practice of considering how any given disaster affects populations that are 65 years and greater or have a disability. The detailed findings are presented in Table 5, and in the marginal analysis table posted in the docket at www.regulations.gov. These findings established the baseline from which the costs of this rule were estimated.

Because FEMA and States already are gathering and providing much of this information, FEMA anticipates minimal impact to States. FEMA does not expect or require States to include every factor in every declaration request. FEMA expects that States will continue to provide a comparable level of information in their request letters, based on their respective circumstances and disaster effects.

Indian Tribal governments (requesting assistance through the State) and local governments currently provide the State with specified factor information for their local area and affected residents. Therefore, FEMA anticipates Indian Tribal governments (requesting assistance through the State) and local governments will not directly incur additional costs from the rule.

As previously discussed, the new factor FEMA is adding is Fiscal Capacity. Both FEMA and States will be affected by the addition of this factor. For FEMA, the increase in burden will result from annually collecting the information and providing it to the States. This increase in burden is expected to begin in year 1 and remain the same for each subsequent year. FEMA also will incur a cost for providing IA declaration factors training. For States, an increase in burden will be realized in the first year when States download the fiscal capacity data, adjust their templates and files to accommodate the new Fiscal Capacity factor, and attend IA declaration factor training. In each subsequent year, the burden for States is expected to decrease from year 1 because it will be for downloading and storing the fiscal capacity data only. FEMA will provide a link on its website to the data in addition to downloading

and storing the information for its own reference. FEMA assumes that States will download and store the data in subsequent years prior to any major disaster so that the information is readily available if they need to request IA. In addition, once a State has downloaded and stored this data for one disaster, the State is likely to keep the data on hand for future reference and to meet administrative records retention policies.

FEMA does not expect the new Fiscal Capacity factor to affect the number of IA declaration requests made by States or change the amount of IA assistance provided. The new factor is highly correlated to data previously used; thus, would have likely resulted in comparable declaration recommendations had it been used. For this reason, the final rule is expected to result in comparable recommendations in the future and the rule is not expected to affect transfer payments.

Fiscal Capacity. FEMA recognizes that each State's capacity to respond and recover varies based on the circumstances of the disaster and the State's resources. FEMA includes fiscal capacity data to better evaluate a State's ability to adequately respond to a disaster with or without supplemental Federal assistance. The GAO suggested in multiple reports that FEMA should incorporate States' fiscal capacity into its considerations when recommending disaster declarations to the President. All of the GAO reports focused on including fiscal capacity in FEMA's PA declaration factor criteria. FEMA believes there also is a need to assess a State's capacity to respond and recover on its own when determining whether a major disaster declaration that authorizes IA is warranted.

To evaluate a State's fiscal capacity for response to a major disaster, FEMA will review data on a State's TTR.²⁸ The U.S. Department of Treasury (Treasury) calculates the TTR of each State, which is used as a measure of a State's fiscal capacity.²⁹ TTR is based on Gross

²⁸ Pursuant to Public Law 102-321, the U.S. Department of the Treasury produces annual estimates of total taxable resources (TTR) for all States. The TTR estimates are published by September 30th each year and have a two-year lag. For example, TTR for 2016 was published on September 28, 2018. The formula for calculating TTR uses gross state product as its base, subtracts non-taxable components, then accounts for cross-border income flows. This calculation provides a "... comprehensive measure of all the income flows a state can potentially tax."

²⁹ GAO Report 12-838 stated that other Federal departments and agencies have used TTR data to determine a jurisdiction's fiscal capacity and the extent to which a jurisdiction should be eligible for Federal assistance; specifically the Department of Health and Human Services' Substance Abuse and

Domestic Product (GDP) by State, measuring the unduplicated sum of the income flows produced within a State, but makes adjustments for additional, potentially taxable income flows earned by residents from out-of-state sources such as capital gains and commuter income.³⁰ FEMA acknowledges that TTR does not capture a State's actual tax revenue or expenditures and cannot be viewed as a financial accounting of a State's budget. The GAO supports the use of TTR as a measure of a State's fiscal capacity because it provides a more comprehensive measure of a State's fiscal capacity when compared to other options, which do not include the additional, potentially taxable income flows earned by residents from out-of-state sources such as capital gains and commuter income.³¹

Further, FEMA is removing the "Average Amount of Assistance per Disaster" table that is found at the current 44 CFR 206.48(b)(6) which was based on outdated (1990 Census Data) population numbers and simplistic size categories that grouped States into only three categories: Small, medium, and large. Removing this table and instead using TTR will allow a State and FEMA to include a State-specific assessment of that State's fiscal capability when responding to a major disaster.

FEMA conducted a retrospective analysis of its recommendations and major disaster declarations by the President and confirmed they are correlated to the fiscal capacity of the requesting State, as represented by State TTR data. Historically, FEMA captured an aspect of fiscal capacity when evaluating the damage caused by each disaster in relation to the population of the affected State. States with the highest State TTRs tended to have the highest population. Based on this analysis, FEMA found that major disaster declarations authorizing IA have a correlation to the fiscal capacity

Mental Health Services Administration's block grant program and Community Mental Health Service use TTR. Federal Disaster Assistance, Improved Criteria Needed to Assess a Jurisdiction's Capability to Respond and Recover on Its Own, GAO-12-838, September 2012, pages 31-32. <http://www.gao.gov/products/GAO-12-838>. Accessed and downloaded November 9, 2015.

³⁰ United States Department of the Treasury, "Treasury Methodology for Estimating Total Taxable Resources (TTR)," Revised November 2002, page 2, <https://www.treasury.gov/resource-center/economic-policy/Documents/nmpubsum.pdf>. Accessed and downloaded November 9, 2015.

³¹ United States Government Accountability Office, FEDERAL DISASTER ASSISTANCE: Improved Criteria Needed to Assess a Jurisdiction's Capability to Respond and Recover on Its Own, GAO-12-838, September 2012, page 31. <http://www.gao.gov/products/GAO-12-838>. Accessed and downloaded November 9, 2015.

of the requesting State, as represented by the State TTR data.

FEMA reviewed 220 major disaster declaration requests that included IA and were submitted between January 2008 and December 2016.³² The purpose of the review was to determine if there would have been any impact on a disaster determination from using State TTR to assess a State's need for a major disaster declaration authorizing IA. Each State request included an estimate of the costs from the damages attributed to the disaster event. FEMA retrieved the TTR data that was available for that State at the time of the request. For each request, FEMA used

estimated IA costs and the State's TTR to calculate a ratio of IA Cost to (fiscal) Capacity (ICC). For example, assume a State estimated \$2,000,000 in IA costs and the State's TTR was \$30,000,000,000. FEMA then divided \$30,000,000,000 by \$1,000,000 to get the State's TTR in millions, which is \$30,000. (\$30,000,000,000 ÷ \$1,000,000 = \$30,000) FEMA divided the estimated cost of IA, which was \$2,000,000, by \$30,000 to get the ICC ratio 66.7. (\$2,000,000 ÷ \$30,000 = 66.66)

Based on the ICC calculation for all 220 State requests, FEMA's analysis shows the greater the ICC ratio for a major disaster declaration request that

included IA, especially those with ICCs above 25, the more likely the request for IA was granted. Conversely, the lower the ICC ratio for a major disaster declaration request that included IA, especially those with ICCs below 10, the more likely the request for IA was denied. The following table displays the total number of major disaster declaration requests and the total of the IA requests that were granted by ICC ratio size. The table also shows the percentage of granted major disaster declaration requests within each respective ICC group.

TABLE 2—NUMBER OF IA REQUESTS AND GRANTED IA REQUESTS BY ICC RATIO

ICC ratio (estimated cost of IHP/(TTR/\$1 million))	Number of requests received (2008–2016)	Number of requests approved (2008–2016)	Percentage of requests approved (2008–2016)
>25	65	55	85
10–25	71	32	45
<10	84	8	10
Total	220	95	43

Based on the above data, there were 71 major disaster declaration requests that included IA with ICC ratios between 10 and 25; and 32 of these requests were declared major disasters that included IA. Hence, 45 percent of major disaster declaration requests with ICC ratios between 10 and 25 that included IA were granted. FEMA believes this approval rate helps illustrate that a number of factors are taken into consideration when determining FEMA's recommendation, especially in borderline events.

In addition, FEMA's above analysis shows that the higher the estimated cost of IA damages and the lower the State TTR, the more likely a major disaster declaration request authorizing IA was granted in the past. In the past, States generally provided qualitative discussions on the effects of previous disasters, State median household income data, and population data as indicators of their economic health. In response to recommendations in GAO

Report 12–838, FEMA examined the effect of using TTR, rather than median household income and population data as indicators of a State's economic ability to support itself in the event of a major disaster and whether using TTR would have changed FEMA's past recommendations.³³ FEMA is including TTR to introduce a more direct measure of State fiscal capacity than the qualitative information already being provided by the States.³⁴ FEMA will continue to consider, when provided, information from States on the effects of previous disasters and State median household income and population data.

FEMA found that TTR and population are highly correlated (0.984). Although these measures are highly correlated, FEMA chose State TTR as its preferred data point as a more direct measure of fiscal capacity for several reasons. TTR more accurately reflects a State's ability to respond to a disaster because TTR is a measure of fiscal capacity which takes into consideration the population of the

State and the income flows, not just an estimate of the number of people in the State. In addition, TTR includes much of the business income that does not become part of the income flow to jurisdiction residents, undistributed corporate profits, and rents and interest payments made by businesses to out-of-jurisdiction real estate owners and lenders. FEMA concludes that its consideration of State TTR would not have affected past recommendations based on the above analysis that shows that TTR and population are highly correlated.³⁵ Accordingly, FEMA anticipates that using State TTR when making future major disaster declaration recommendations will not reduce the number of IA declaration requests made by States or change the amount of IA assistance provided.

FEMA recognizes that some disasters cause enough damage to overwhelm even the most fiscally capable States and that disasters may result in special circumstances. For example, a special

³² For the analysis on TTR, FEMA excluded disaster declaration requests that did not include a request for IA. FEMA also excluded duplicate requests, U.S. territories' requests (because there is no TTR data available), requests without summaries of the PDA data or with insufficient data, and requests that involved an expedited decision. However, expedited disaster declarations that included PDA data and a request for IA were included. For example, the disaster declaration request from New York for Hurricane Irene (2008, DR 4020) was included in the data set even though the declaration was expedited because the request

included an estimate for PDA. See "New York—Hurricane Irene, FEMA—4020—DR," Summary of Damage Assessment Information Used in Determining Whether to Declare a Major Disaster, Accessed and downloaded April 11, 2017. <https://www.fema.gov/pdf/news/pda/4020.pdf>. FEMA will use data related to personal income and GDP for territories. The estimated cost to States and to FEMA for downloading and providing fiscal capacity data are included in the analysis. See section, "5. Impacts to Costs, Benefits, and Transfers."

³³ Although GAO Report 12–838 largely related to the Public Assistance disaster declaration process, FEMA decided to evaluate whether TTR could also improve the IA major disaster declaration process.

³⁴ FEMA recognizes that TTR does not perfectly capture a State's fiscal capacity and encourages States to provide any information they believe support their IA declaration request.

³⁵ FEMA also reviewed using per capita TTR and found per capita TTR and population are not highly correlated (0.099) and that as a result, the use of per capita TTR may have affected past recommendations.

circumstance would be if a State has experienced several major disasters in a very short time or if a particular disaster included widespread and extensive damage. Another special circumstance would be if the disaster affected a small geographic area. If a disaster request is for a small area, FEMA will review per capita personal income by local area data to ascertain a local government's fiscal capacity. FEMA previously evaluated data on median household income per county. FEMA expects that the shift from median household income per county to per capita personal income by local area will have minimal impact and no new costs because one is replacing the other.

FEMA's intent in this final rule is to continue to take multiple factors into consideration, including the fiscal capacity factor whether it be State TTR, GDP by State, or per capita personal income. The addition of the fiscal capacity factor will provide State-specific information that will assist FEMA in determining whether the State is, in fact, overwhelmed and in need of supplemental Federal assistance.

FEMA will continue to use multiple factors and relevant data to formulate its recommendations to the President on major disaster declarations that authorize IA.³⁶ No single data point or factor will singularly affect FEMA's recommendation or the President's ultimate determination of whether to issue a major disaster declaration authorizing IA.

5. Impacts to Costs, Benefits, and Transfer Payments

In the following section, FEMA will discuss the rule's quantified costs, qualitative benefits, and why there are no expected effects to transfer payments.

a. State Costs

FEMA received multiple comments questioning whether the full costs to States had been captured in the NPRM. In general, commenters questioned whether the additional burden resulting from the new Fiscal Capacity Factor was accurate; pointed out that the cost of State personnel attending training was omitted; and voiced concern that the

final rule would slow the declaration process because key decision makers might not be familiar with the final rule. FEMA considered each of the comments and adjusted its estimated costs accordingly by incorporating new training costs, familiarization costs, updated data retrieval costs, and new costs associated with States incorporating the new Fiscal Capacity data into existing files and processes. FEMA also more descriptively presented the baseline data on which its cost estimates are based.³⁷ A more detailed summary of these comments, and FEMA's responses, follows.

Additional Burden from Fiscal Capacity Factor. Four commenters questioned whether the estimate of the additional burden resulting from the new Fiscal Capacity Factor was accurate. Specifically, three States (Indiana, Florida, New York) and one emergency management association (NEMA) pointed out that incorporating new data points into the IA declaration request will increase staff time.

FEMA concurs with these comments and adjusted its cost estimates associated with States downloading the new Fiscal Capacity factor data and incorporating the data into existing files and processes. FEMA did not include an additional burden for reviewing the data because review and analysis of this data occurs when the declaration request is being formulated by the State. The costs of reviewing any data included in the request is already embedded in the process. As shown by FEMA's baseline analysis, many of the factors and sub-factors listed in the rule have previously been submitted or requested subsequent to a State request for a major disaster declaration that includes IA, and codifying them will not increase costs. FEMA does not expect or require States to include every factor in every disaster declaration request. FEMA anticipates that States will continue to provide a comparable level of information in their request letters, based upon their respective circumstances and disaster effects. However, fiscal capacity in the form of TTR (States), GDP by State (Territories), or Per Capita Personal Income (PCPI) (small areas) typically has not been provided by States or considered by FEMA and it will impose a new cost. Data related to fiscal capacity is available from publicly accessible databases and websites. For this reason, States can access and download the data without incurring any costs for the data itself.

³⁷ Baseline data estimates were presented qualitatively in the NPRM, but have been included quantitatively in the Final Rule.

However, FEMA recognizes that there will be an additional burden to States resulting from downloading the relevant Fiscal Capacity data annually and adjusting their templates and files in year 1. The estimated cost for all States is \$8,935 in year 1 and \$1,787 in each subsequent year. FEMA has included these costs in the final rule as a result of public comments received on the NPRM.

FEMA estimates that in year 1 each State will spend approximately four hours on downloading the new fiscal capacity data and adjusting files and templates to incorporate the new Fiscal Capacity factor.³⁸ To estimate the additional activity time, FEMA performed a "dry run" retrieval and storage of the fiscal capacity data for 13 randomly chosen States.³⁹ FEMA estimates it will take 10 to 15 minutes to retrieve and store Treasury's TTR data (including all State data in a single retrieval). The average of this range, 12.5 minutes, is used in this analysis. FEMA estimated it would take the equivalent amount of time for the BEA's GDP by State data, and uses 12.5 minutes for that retrieval and storage. FEMA estimated it would take 15 to 30 minutes to retrieve BEA's per capita personal income data and used the average of 22.5 minutes for that retrieval and storage. FEMA summed these three time burdens to calculate a total burden of 47.5 minutes ($12.5 + 12.5 + 22.5 = 47.5$). The total burden of 47.5 minutes was divided by 60 minutes, for an estimated increased burden of approximately 0.8 hours ($(12.5 + 12.5 + 22.5) \div 60 = 0.7917$).

FEMA's "dry run" example analysis took approximately 3.2 hours and included formatting the tables into a useable format for analysis (1.6 hours) and creating tables and graphs (1.6 hours). FEMA estimates it will take a similar amount of time for States to update their current templates to incorporate the new fiscal capacity data. Based on this experience, FEMA estimates that downloading the data and adjusting files and templates will take each State approximately 4.0 hours in year 1 ($0.8 \text{ hours} + 1.6 \text{ hours} + 1.6 \text{ hours} = 4.0 \text{ hours}$). The total time for all 56

³⁸ FEMA will provide links to the relevant data on its website, www.FEMA.gov. In addition, to maintain records and support FEMA's work, the data likely will be stored by FEMA's IA Program. FEMA assumes that States will use the links to the data sources provided by FEMA.

³⁹ The times listed for data retrieval represent the time it took FEMA to pull the information directly from the Treasury and BEA sources. FEMA will provide links to the data sources on its website, www.FEMA.gov to facilitate access to the data sources for States.

³⁶ An in-depth discussion of the factors and relevant data considered is presented herein. See "III. Discussion of Public Comments on Proposed Rule." With the exception of TTR, the proposed factors have been taken into consideration by FEMA in the past when making past recommendations for major disaster declarations including IA. The factors were covered, but not specified, previously under the "other relevant information" prong of 44 CFR 206.48. FEMA continues to emphasize that no single factor would be used to determine if a recommendation is warranted.

States⁴⁰ is 224 hours (4.0 hours × 56 States = 224 hours).

FEMA anticipates a State Government First-Line Supervisor of Office and Administrative Support Workers (1st Line Supervisor), or equivalent, will download the data and adjust the templates and files. The fully-loaded wage rate for the 1st Line Supervisor is \$39.89⁴¹ per hour.⁴² To estimate the total costs for States, FEMA multiplied the fully-loaded hourly rate for a 1st Line Supervisor by the total hours for all States resulting in total costs to download the data and update templates and files in year 1 of \$8,935 (\$39.89 per hour × 224 hours = \$8,935.36). In subsequent years, only downloading and data entry into files and templates is expected. As stated previously, FEMA estimates this will take 0.8 hours. Using the same methodology, FEMA multiplied 0.8 hours by 56 States and then multiplied by the fully-loaded hourly rate of \$39.89 for a total of \$1,787 per year beginning in year 2 (0.8 hour × 56 States × \$39.89 per hour = \$1,787.07).

Training Costs. FEMA received two comments that noted there would be time and expense involved for States in training employees. FEMA has added a cost for States to attend FEMA-provided training on the final rule.⁴³ Training attendance is voluntary, but FEMA has estimated costs based on the assumption that all States will attend training.

⁴⁰ There are 56 States, as defined by 44 CFR 44 CFR 206.2(a)(22). Throughout this analysis, "States" includes the 50 U.S. States, District of Columbia, and the 5 territories listed (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

⁴¹ Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. Employer Costs Per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Civilian Workers, by Major Occupational and Industry Group, June 2016." Calculated by dividing total compensation for all workers of \$34.05 by wages and salaries for all workers of \$23.35 per hour (yields a benefits multiplier of approximately 1.46 × wages). <https://www.bls.gov/web/ececc/ececcqrtn.pdf>. Accessed and downloaded, October 12, 2016.

⁴² Base hourly wage rate of \$27.32 multiplied by a 1.46 benefits factor. (\$27.32 × 1.46 = \$39.89). U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2016, All Data (XLS), National Industry-Specific Occupational Employment and Wage Estimates, NAICS code 999200, State Government excluding schools and hospitals, and Standard Occupational Classification (SOC) code 43-1011 for First-Line Supervisors of Office and Administrative Support Workers. <https://www.bls.gov/oes/tables.htm>. Accessed and downloaded, October 12, 2016.

⁴³ FEMA provided two outreach webinars for the NPRM and plans to have four training webinars for the final rule. The total training costs included herein represent the aggregate training costs for the NPRM and the final rule. States' costs are for attending the FEMA-provided training; FEMA costs are for developing and presenting the training.

Given that the intent of the rule is to provide clarity, FEMA will offer training for all States on the changes included in the rule. FEMA included the costs associated with States attending training on the rule in year 1. Outreach webinars were offered by FEMA following the publication of the NPRM. To estimate the cost of the training to States and capture the costs associated with the outreach webinars, FEMA used the participation data from the NPRM outreach webinars. They were presented via webinar, lasted one hour, and generally were attended by two⁴⁴ individuals per State, no matter the size of the State or if the State was prone to experience disasters.

FEMA calculated the cost of the training to the States by adding the fully-loaded hourly wage rate for both State staff and multiplying by the number of States. The estimated total cost of States attending the training is \$13,340.⁴⁵

Familiarization Costs. Three comments were received that noted States, local emergency management divisions, or impacted jurisdictions would have to become familiar with the final rule. In response, FEMA added familiarization costs for States, but not for local emergency management divisions or jurisdictions. FEMA chose not to include new costs for locals because the final rule applies to States, which is the level from which a major disaster declaration request is made. Further, FEMA assumes States regularly update their emergency response networks and local emergency management divisions on changes in the field. FEMA believes that States will continue to disseminate the new information through each State's respective process.

To estimate the time for States to understand changes made to the regulations, FEMA included time for State employees to familiarize themselves with the regulations. FEMA estimates States will spend 0.5 hours to familiarize themselves and understand the new factor data requirements.⁴⁶

⁴⁴ FEMA anticipates that one of the positions would be a State Government Chief Executive, or equivalent, and the other would be a State Government 1st Line Supervisor, or equivalent.

⁴⁵ The calculation uses a base of 56 States, which includes the 50 U.S. States, the District of Columbia, and 5 territories. The result is multiplied by 2, once for outreach webinars that have already been completed and once for the final rule training. {[2 webinars × (\$79.22 + \$38.89) × 1 hour × 56 States = \$6,670.16]} = \$13,340.32

⁴⁶ To estimate the time for States to familiarize themselves and understand the new factor data requirements, FEMA surveyed its own employees who formerly worked for State governments. Thirteen employees were identified who worked for various States, representing multiple regions, State

FEMA assumes a State Government Chief Executive, a senior level government official, or equivalent, familiar with State emergency assistance programs, will read the existing and new regulations to understand the changes. The fully-loaded wage rate for a State Government Chief Executive is \$79.22⁴⁷ per hour.⁴⁸ The hourly rate of \$79.22 is multiplied by 0.5 hour and 56 States to calculate a State cost in year 1 of \$2,218 to familiarize themselves with the new rule (\$79.22 × 0.5 × 56 = \$2,218.16). FEMA also assumes that each State will review the supplemental guidance materials at least once in year 1 and once each subsequent year. The estimated cost for each subsequent year uses the same method as above, but reduces the time needed from 0.5 hours to 0.25 hours, for the Chief Executive to refresh his or her understanding. The resulting cost for each subsequent year is estimated at \$1,109. (\$79.22 × 0.25 × 56 = \$1,109.08)

Potential Delay in Submitting the Declaration Request. Seven commenters were concerned that this final rule requires so much additional information and will result in increased workload while a disaster is unfolding that future major disaster requests would be delayed. FEMA contends that this final rule will not delay the major disaster request process, based on its review of the 85 major disaster declaration

sizes, and a range in years of service in State government and FEMA. These employees were asked to read the proposed and existing regulations and answer questions to test their understanding of the changes. The employees also were provided a copy of excerpts of this regulatory preamble if they needed further information to answer the test. Approximately 40 percent of the employees referred back to the preamble to answer the questions. It took an average of 17 minutes to read the existing and proposed regulatory text and 11 minutes to answer the questions, including referring back to the preamble. FEMA rounded 28 minutes (11 minutes + 17 minutes) to 30 minutes and used 0.5 hours to calculate the costs.

⁴⁷ Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. Employer Costs Per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Civilian Workers, by Major Occupational and Industry Group, June 2016." Calculated by dividing total compensation for all workers of \$34.05 by wages and salaries for all workers of \$23.35 per hour (yields a benefits multiplier of approximately 1.46 × wages). <https://www.bls.gov/web/ececc/ececcqrtn.pdf>. Accessed and downloaded, October 12, 2016.

⁴⁸ Base hourly wage rate of \$54.26 multiplied by a 1.46 benefits factor. (\$54.26 × 1.46 = \$79.22)

U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics, May 2016, All Data (XLS), National Industry-Specific Occupational Employment and Wage Estimates, NAICS code 999200, State Government excluding schools and hospitals, and Standard Occupational Classification (SOC) code 11-1011 for Chief Executives. <https://www.bls.gov/oes/tables.htm>. Accessed and downloaded, October 12, 2016.

requests for IA that States submitted between January 1, 2012 and December 31, 2016. All were examined, whether the declaration was granted or denied.

FEMA found that the four new Fiscal Capacity sub-factors had not been provided previously by States. FEMA found that out of the remaining 23 sub-factors, 19 were provided in at least 80 percent of the requests and only 4 were provided in less than 20 percent of the request letters. All four are sub-factors of the Disaster Impacted Population Profile factor. Specifically, the four sub-factors are the percentage of population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Program benefits appeared in only 5 percent of the requests (4 occurrences in 85 total requests); the percentage of the population who speak a language other than English and speak English less than “very well” in only 7 percent of the requests (6 occurrences in 85 total requests); the percentage of population 18 years old and younger in only 18 percent (15 occurrences in 85 total requests); and any unique considerations regarding American Indian and Alaskan Native Tribal populations that may not be reflected in the U.S. Census Bureau data in only 18 percent of the requests (15 occurrences in 85 requests). FEMA found that these specific sub-factors were included by States when they believed the disaster adversely affected and heightened the vulnerability of these particular segments of the population. This is consistent with to FEMA’s long-standing consideration of how any given disaster affects the population that is 65 years and greater, as well as the percentage of the population with a

disability. The detailed findings are presented in Table 5, and in the marginal analysis table posted in the docket at www.regulations.gov.

The 23 sub-factors being codified were previously captured under the “other relevant information” prong of 44 CFR 206.48. FEMA does not expect or require States to include every factor in every disaster declaration request. FEMA expects that States will continue to provide a comparable level of information in their request letters based on their respective circumstances and disaster effects; thus, FEMA does not include a cost for codifying this information and does not expect any delays to the major disaster declaration request process.

FEMA notes that if a State is unable to provide information for a particular factor, or factors, FEMA will evaluate and provide a recommendation on the State’s need for Federal assistance based on the information submitted and data available from other sources, as appropriate. The only required elements of a State’s major disaster declaration request appear at 44 CFR 206.36. FEMA’s intent, through this rule, is to clearly identify the considered data points that previously have been captured under the “other relevant information” prong of 44 CFR 206.48. In some instances, certain pieces of information identified in the rule may not be applicable, may be unavailable, or the circumstances of the disaster may not allow a State to collect some information identified within the rule. In these instances, pursuant to 44 CFR 206.36, States must provide some information that supports their request for a major disaster declaration authorizing IA, but will not have to

address every data point in 44 CFR 206.48 to be granted the request. For example, for certain catastrophic events, preliminary damage assessments are not necessary to determine the requirement for Federal assistance. In these instances, States may submit an abbreviated request pursuant to 44 CFR 206.36(d). These requests need only contain limited information as specified by that provision.

Large scale disasters may not need as much detail or data to support a major disaster declaration request. However, under other circumstances, such as when the disaster affects a smaller geographic area, it may be more difficult to determine if a need for Federal disaster assistance exists without the State providing sufficient information. This rule identifies the factors that FEMA will consider in its review of a major disaster declaration request that includes IA, and allows States to supplement their submissions with additional information. It is important to note that ultimately, the amount and type of data provided by the State is voluntary. In addition, FEMA confirmed that the Fiscal Capacity factor and its sub-factors are updated at least annually and are publicly available on Treasury’s and BEA’s websites at no cost to States.^{49 50} Given that these data are updated at least annually, States are encouraged to download the data when they are updated.

FEMA estimates total State costs in the first year to be \$24,494 and costs in subsequent years to be \$2,896. The following table presents the ten-year costs for States (undiscounted, discounted at 7 percent and discounted at 3 percent).

TABLE 3—TOTAL COSTS TO THE STATES

Year	Downloading and updating files	Cost to familiarize with rule	Training	Total
1	\$8,935	\$2,218	\$13,340	\$24,494
2	1,787	1,109	0	2,896
3	1,787	1,109	0	2,896
4	1,787	1,109	0	2,896
5	1,787	1,109	0	2,896
6	1,787	1,109	0	2,896
7	1,787	1,109	0	2,896
8	1,787	1,109	0	2,896
9	1,787	1,109	0	2,896

⁴⁹ Treasury’s website provides current and past TTR information for all States. Data has been provided annually in mid- to late September since 1999. The only exception was in 2010, when the data was provided on September 30, 2010, and again on December 13, 2010, which was a research series. See Treasury, Resource Center, Total Taxable Resources, <https://home.treasury.gov/policy-issues/economic-policy/total-taxable-resources>.

⁵⁰ BEA’s website provides current and past GDP by State and Local Area Personal Income. Annual GDP by State data are updated quarterly with the final published in May, following the calendar year the data represents. For example, the final GDP by State in 2015 was published in May 2016. This data has been published annually since May 1988. For Local Area Personal income, BEA updates the data quarterly a final for each year provided in

November, following the calendar year the data represents. For example, the final data Local Area Personal Income in 2015 was published in November 2016. BEA first published personal income for States, counties, and metropolitan areas in 1975. See BEA, Local Area Personal Income Methodology at I-2 (Nov. 2016), available at https://www.bea.gov/sites/default/files/methodologies/0417_GDP_by_State_Methodology.pdf.

TABLE 3—TOTAL COSTS TO THE STATES—Continued

Year	Downloading and updating files	Cost to familiarize with rule	Training	Total
10	1,787	1,109	0	2,896
Total	25,019	12,199	13,340	50,558
Discounted at 7%	19,232	8,826	12,468	40,525
Annualized at 7%	2,738	1,257	1,775	5,770
Discounted at 3%	22,184	10,537	12,952	45,673
Annualized at 3%	2,601	1,235	1,518	5,354

b. Federal Costs

FEMA anticipates the Federal government will incur small additional costs resulting from the final rule. As noted above, FEMA already considers most of these factors under the “other relevant information” prong of the regulation when reviewing major disaster declaration requests. FEMA already had begun changing the way it collects information internally for major disaster declaration recommendations, which did not require regulatory action. Therefore, these increased costs already had been internalized without this regulation. For this reason, the only expected increased costs are due to the new Fiscal Capacity factor. FEMA believes this additional activity will be accomplished with existing personnel; thus, the costs are considered the opportunity cost of the activities that would have otherwise been performed. No increase in Federal expenditures is expected to result from this final rule.

In the past, FEMA would review pre-disaster data about a disaster location. This pre-disaster data provided FEMA with information that helped to illustrate the population and geographic area that was affected by a disaster. The pre-disaster data came from Federal sources, such as the United States Census Bureau and Bureau of Economic Analysis (BEA). Independent of the regulation, FEMA began to streamline how pre-disaster data is collected and disseminated, as well as collect and transmit information for the PDA process more quickly.

One of the areas where FEMA will incur costs is for the retrieval of fiscal capacity data from the United States Department of the Treasury (Treasury) and BEA. FEMA used the same information on estimated additional activity time that was presented previously: Time to retrieve, store, and update the data from Treasury (12.5 minutes); BEA’s GDP by State (12.5 minutes); and BEA’s per capita personal income by local area (22.5 minutes). FEMA summed these three time burdens to calculate a total burden of

47.5 minutes (12.5 + 12.5 + 22.5 = 47.5). The total burden of 47.5 minutes was divided by 60 minutes, for an estimated increased burden of 0.8 hours ((12.5 + 12.5 + 22.5) ÷ 60 = 0.7917).

FEMA expects the data retrieval will take place once annually. The retrieval will be completed by a Federal employee in the DC area at the General Schedule 12, step 1 level, earning an hourly wage rate of \$36.60.⁵¹ These positions have a fully-loaded wage rate of \$53.44.⁵² FEMA multiplied the time per year, 0.8 hours, by the fully-loaded wage rate of \$53.44, to get an annual Federal cost increase of \$43 (0.8 × \$53.44 = \$42.75).

FEMA also included costs in year 1 associated with providing training on the rule. FEMA received a public comment requesting FEMA to provide adequate training on the rule once finalized. As a result of this comment, and because the intent of the rule is to provide clarity, FEMA provided outreach seminar to States after the NPRM and will offer training for all States on the changes included in the final rule. Thus, FEMA has added the cost for these events to the analysis of this final rule. To estimate the costs of the rule and capture the cost of developing both the NPRM outreach and the final rule training to States, FEMA used the time data from developing and presenting the NPRM training.

⁵¹ The General Schedule (GS) 12 (Step 1) hourly wage of \$37.13 is taken from the Office of Personnel Management; 2015 General Schedule (GS) salaries & wages tables; locality pay tables (Washington-Baltimore- Northern Virginia, DC-MD-VA-WV-PA). Retrieved April 4, 2016, from <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/salhl.pdf>.

⁵² Base hourly wage rate of \$36.60 multiplied by a 1.46 benefits factor. (\$36.60 × 1.46 = \$53.44)

Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. Employer Costs Per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Civilian Workers, by Major Occupational and Industry Group, June 2016.” Calculated by dividing total compensation for all workers of \$34.05 by wages and salaries for all workers of \$23.35 per hour (yields a benefits multiplier of approximately 1.46 × wages). <https://www.bls.gov/oes/tables.htm>. Accessed and downloaded, October 12, 2016.

The NPRM outreach materials will be modified to reflect the content of the final rule. FEMA anticipates this activity will be accomplished by a Federal employee in the DC area at the General Schedule 15, step 5 level, earning an hourly wage rate of \$68.56.⁵³ These positions have a fully-loaded wage rate of \$100.10.⁵⁴ FEMA estimates it will spend a total of 5 hours preparing training materials, including the time spent developing the original training materials and updating the existing materials,⁵⁵ which results in a one-time cost of \$500 (\$100.10 × 5 hours = \$500.50).⁵⁶ In addition, the training materials are reviewed by two Federal employees in the DC area at the General Schedule 13, step 5, earning an hourly wage rate of \$49.32. FEMA multiplied this wage rate by 1.46 to account for benefits, resulting in a fully-loaded wage rate of \$72.01. FEMA estimates spending approximately 0.5 hours for each employee to review each set of training materials.⁵⁷ The resulting

⁵³ The General Schedule (GS) 15 (Step 5) hourly wage of \$37.13 is taken from the Office of Personnel Management; 2015 General Schedule (GS) salaries & wages tables; locality pay tables (Washington-Baltimore- Northern Virginia, DC-MD-VA-WV-PA). Retrieved April 4, 2016 from <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2015/salhl.pdf>.

⁵⁴ Base hourly wage rate of \$68.56 multiplied by a 1.46 benefits factor. (\$68.56 × 1.46 = \$100.10)

Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. Employer Costs Per Hour Worked for Employee Compensation and Costs as a Percent of Total Compensation: Civilian Workers, by Major Occupational and Industry Group, June 2016.” Calculated by dividing total compensation for all workers of \$34.05 by wages and salaries for all workers of \$23.35 per hour (yields a benefits multiplier of approximately 1.46 × wages). <https://www.bls.gov/oes/tables.htm>. Accessed and downloaded, October 12, 2016.

⁵⁵ FEMA took 3 hours to develop the NPRM outreach webinar and expects to take 2 hours to update that same material for training on the final rule.

⁵⁶ Although commonly held rounding methods hold that \$500.50 is rounded up to \$501, FEMA did not round up at this step. The calculation method used in this analysis rounds up to the nearest dollar at the final calculation.

⁵⁷ The FEMA employees who review the materials will do so two times—once for the NPRM

review time is estimated at \$144 (\$72.01 × 2 staff × 0.5 hours × 2 reviews = \$144.02).

FEMA presented one-hour outreach sessions two times for the NPRM via webinar and anticipates the same format for the final rule training, but will increase the number of times the training will be offered to four for the final rule. The set-up and technical monitoring of the webinars is expected to be accomplished by two General Schedule 12, step 1 level, with a fully-loaded wage rate of \$53.44. Based on its previous experience, FEMA estimates it will take 0.5 hours to set up and take

down the webinar plus an additional 1 hour to monitor. FEMA estimates the one-time cost to set up and monitor the webinars is \$962 (\$53.44 × 1.5 hours × 2 staff × 6 webinars⁵⁸ = \$961.92).

The training is presented by four FEMA staff located in the DC area, one GS 15, step 5 level and three GS 13, step 5 level with fully-loaded hours wage rates of \$100.10 and \$72.01, respectively. To present six, one-hour webinars, the estimated total costs for presenters is \$1,897 [(\$100.10 × 1 GS–15 staff × 6 hours) + (\$72.01 × 3 GS–13 staff × 6 hours) = \$1,896.78].

FEMA estimates the Federal Government’s total costs in the first year to be \$3,546, which includes \$43 to retrieve fiscal capacity data; \$500 to develop and update the training; \$144 to review the updates; \$962 to set-up and monitor the webinars; and \$1,897 to present the training (\$42.75 + \$500.50 + \$144.02 + \$961.92 + \$1,896.78 = \$3,545.97). Costs in subsequent years are estimated to be \$43 for retrieving the fiscal capacity data. The following table presents the total ten-year costs for both FEMA and States (undiscounted, discounted at 7 percent and discounted at 3 percent).

TABLE 4—TOTAL COSTS OF THE RULE

Year	States			FEMA		Total
	Downloading data and updating files	Familiarize with rule	Training	Downloading data	Training	
1	\$8,935	\$2,218	\$13,340	\$43	\$3,503	\$28,040
2	1,787	1,109	0	43	0	2,939
3	1,787	1,109	0	43	0	2,939
4	1,787	1,109	0	43	0	2,939
5	1,787	1,109	0	43	0	2,939
6	1,787	1,109	0	43	0	2,939
7	1,787	1,109	0	43	0	2,939
8	1,787	1,109	0	43	0	2,939
9	1,787	1,109	0	43	0	2,939
10	1,787	1,109	0	43	0	2,939
Total	25,019	12,199	13,340	430	3,503	54,494
Discounted at 7%	19,232	8,826	12,468	302	3,274	44,102
Annualized at 7%	2,738	1,257	1,775	43	466	6,279
Discounted at 3%	22,184	10,537	12,952	367	3,401	49,441
Annualized at 3%	2,601	1,235	1,518	43	399	5,796

c. Benefits

Benefits of the final rule include clarifying FEMA’s existing practices and reducing processing time for requests, while maintaining the States’ ability to assess and determine what information best supports a major declaration request. This rule does not preclude that flexibility for States. Rather, the rule provides clarity by specifically identifying factors considered in the IA declarations process, including many factors that FEMA previously considered under the “other relevant information” prong of the regulation but are not currently specified in 44 CFR 206.48(b).

As noted above, most of the information included in the factors was previously captured under the “other relevant information” prong of the 44

CFR 206.48. FEMA used this information, when appropriate, in evaluating requests for a major disaster declaration that authorized IA. In some instances, FEMA has had to reach back to the State to obtain additional information⁵⁹ on major disaster declaration requests which would better support FEMA’s recommendation on a major disaster declaration authorizing IA. By clearly identifying information considered in the rule, FEMA anticipates that delays in the declaration process will be reduced. The changes in the final rule will improve clarity regarding relevant information that can be used to substantiate a declaration request. States are encouraged to include the additional information in the original request because it may reduce follow-up correspondence and speed up the determination of a major

disaster declaration request. Currently, FEMA does not track the number of times FEMA has had to reach back to the State for additional information and the reduction cannot be quantified at present. However, FEMA subject matter experts believe that greater clarity will promote understanding, resulting in less back-and-forth.⁶⁰

FEMA believes inclusion of the new Fiscal Capacity factor will further inform and strengthen FEMA’s recommendations to the President with regard to major disaster declarations that authorize IA. TTR is sufficiently reliable to serve as the principal indicator for each State from which the discussion about fiscal capacity can begin. TTR provides a general picture of how a State’s economy is changing over time. FEMA recognizes there is a two-year lag in TTR data and encourages

outreach materials and once for the final rule materials.

⁵⁸ The total number of webinars reflects two conducted to support the NPRM and four for the final rule.

⁵⁹ Historically, FEMA has attempted to increase clarity by providing States with major disaster declaration request template letters, which provided a suggested organizational structure for States to follow when making their request for a major disaster declaration.

⁶⁰ In making past determinations, FEMA has not tracked the length of time or the number of written or oral correspondence with the State to retrieve additional data. Therefore FEMA cannot quantify the potential savings from the clarifications provided in the regulation.

each State to provide additional information about its fiscal capacity, especially if there have been noteworthy changes during the two-year period. In addition, the new information considered provides more context about a State's capacity to respond than information FEMA previously considered. For example, although FEMA previously considered median household income for States, this measure does not necessarily reflect the State's capacity to respond, because it is based on the individuals' earnings. Certainly, individual household incomes within a State can affect the State's capacity to respond, but TTR provides a more direct measurement. The new information also may be more objective compared to other ways of assessing a State's capacity to respond for the same reasons.

d. Transfer Payments

FEMA intends the rule to specify and codify factors it will use when making recommendations to the President. FEMA already considers the majority of these factors described in the rule and has done so during previous deliberations on whether to recommend a major disaster declaration authorizing IA to the President. The only information FEMA has not specifically measured in the past are the new measures of fiscal capacity.

Based on FEMA's retrospective analysis on the effect of using ICC ratios in past declaration decisions, FEMA concludes that even though State TTR is

a new factor, it will not have an impact on the overall number of major disaster declarations granted each year that authorize IA because FEMA previously used similar economic data and takes multiple factors into account when making its recommendation. FEMA finds including the fiscal capacity factor (State TTR for States; GDP by State for Territories, and per capita personal income for areas smaller than States and Territories) to be additional objective information because it captures income flows that a State can potentially tax.

The ultimate determination regarding whether or not to grant a State's request for a major disaster declaration resides with the President of the United States. FEMA neither anticipates nor intends for this rule to affect the number of major disaster declarations authorizing IA that are granted each year. Rather, FEMA believes this rule clarifies FEMA's regulations consistent with the statutory mandate in a cost-effective manner. The majority of the factors included in the rule have previously been considered by FEMA when it made its recommendation to the President on past declaration requests for IA. Based on these reasons, FEMA anticipates this rule will not have an effect on transfer payments, which are payments from the Federal government to States and individuals.

6. Total Impact of the Final Rule

FEMA estimates the impact of all the factors together will result in a small burden increase for States and FEMA.

The additional burden results from States having to provide the Fiscal Capacity factor in their requests, to attend training, and to become familiar with the regulatory change. For FEMA, the additional costs result from retrieving data for its consideration of major disaster declaration requests and providing training on the rule to States. The net quantified impact is a ten-year total cost of \$44,102 discounted at 7 percent and \$49,441 discounted at 3 percent. These are considered opportunity costs and are not expected to increase staffing needs or have an effect on Federal or State expenditures. FEMA anticipates no impact to average annual transfer payments due to codifying the existing factors or including the new factor. Based on the above analysis, FEMA estimates the rule will impose a total additional annual burden to States and FEMA of \$28,040 in year 1 and \$2,939 in each subsequent year.

7. Marginal Analysis of the Factors

The following table provides a breakdown of each IA declaration factor included in the final rule, its baseline, and the marginal effect of the rule. Activity costs per year⁶¹ and associated benefits also are included. The rule would not change the total amount of Federal assistance available to individuals and households.

TABLE 5—IA DECLARATIONS FACTOR BASELINE AND MARGINAL ANALYSIS

Factor	Baseline: factors previously included in States' Dec. requests		Marginal analysis activity cost per year		Benefits
	Number of times	Percent	FEMA	States	
Fiscal Capacity: Total Taxable Resources (TTR) of the State, 44 CFR § 206.48(b)(1)(i)(A).	New	n/a	<i>Training:</i> \$911—In year 1, FEMA will spend approximately 12.7 hours to develop, review, and conduct training on the new factor and 0 hours and \$0 in subsequent years. <i>Download Data:</i> \$11—In year 1, FEMA will spend 10–15 minutes retrieving and storing Treasury data (including all State data in one retrieval).	<i>Training:</i> \$3,464—In year 1, States will spend a total of approximately 58 hours participating in the IA declaration factor training, and 0 hours and \$0 in subsequent years. <i>Download Data and Update Files:</i> \$2,323—In year 1, States will spend a total of approximately 58 hours retrieving and storing Treasury data and updating templates to accommodate the new data.	Informs States that FEMA may assess State's taxable resources based on TTR and will use TTR as the basis for calculating the ICC ratio to depict State economic growth or decline and relative fiscal capacity with comparably-sized States or the Nation.

⁶¹ FEMA based the proportional distribution of the fiscal capacity factor costs in Table 6 on the estimated time it takes to retrieve, store, and update the data, as shown in section "5.a. State Costs." FEMA estimated a total burden of 47.5 minutes (0.8 hours). Specifically, costs are apportioned to TTR

data from Treasury (12.5 minutes or 26 percent of the total); BEA's GDP by State (12.5 minutes or 26 percent of the total); and BEA's per capita personal income by local area (22.5 minutes or 48 percent of the total). For example, FEMA estimates the total cost to FEMA for providing the IA declaration factor

training is \$3,503. In Table 5 FEMA apportions 26 percent of the total (\$911) to TTR, 26 percent of the total (\$911) to GDP by State, and 48 percent of the total (\$1,682) to per capita personal income by local area.

TABLE 5—IA DECLARATIONS FACTOR BASELINE AND MARGINAL ANALYSIS—Continued

Factor	Baseline: factors previously included in States' Dec. requests		Marginal analysis activity cost per year		Benefits
	Number of times	Percent	FEMA	States	
Gross Domestic Product (GDP) by State 44 CFR § 206.48(b)(1)(i)(B).	New	n/a	<p>\$11—In subsequent years, FEMA will spend 10–15 minutes retrieving and storing Treasury data (including all State data in one retrieval).</p> <p>No new costs are included for reviewing the data. FEMA review of this data is offset by no longer having to review median household income.</p> <p><i>Training:</i> \$911—In year 1, FEMA will spend approximately 12.7 hours to develop, review, and conduct training on the new factor and 0 hours and \$0 in subsequent years.</p> <p><i>Download Data:</i> \$11—FEMA will spend 10–15 minutes a year for retrieving and storing BEA GDP data (including all State and Territory data in one retrieval).</p> <p>\$11—In subsequent years, FEMA will spend 10–15 minutes retrieving and storing BEA GDP data (including all State and Territory data in one retrieval).</p> <p>No new costs are included for reviewing the data. FEMA review of this data is offset by no longer having to review median household income.</p>	<p>\$464—In subsequent years, States will spend a total of approximately 12 hours retrieving and storing Treasury data for their respective state.</p> <p>No new costs are included for reviewing the data. FEMA assumes that State review of this data is offset by no longer having to review median household income.</p> <p><i>Familiarization:</i> \$577—In year 1, States will spend a total of approximately 7.3 hours reading the new rule as it relates to Treasury data.</p> <p>\$288—In subsequent years, States will spend a total of approximately 3.6 hours re-reading the rule.</p> <p><i>Training:</i> \$3,468—In year 1, States will spend a total of approximately 58 hours participating in the fiscal capacity factor training, and 0 hours and \$0 in subsequent years.</p> <p><i>Download Data and Update Files:</i> \$2,323—In year 1, States will spend a total of approximately 58 hours retrieving and storing BEA GDP data and updating templates to accommodate the new data.</p> <p>\$464—In subsequent years, States will spend a total of approximately 12 hours a year for retrieving and storing BEA GDP data for their respective state.</p> <p>No new costs are included for reviewing the data. FEMA assumes that State review of this data is offset by no longer having to review median household income.</p> <p><i>Familiarization:</i> \$577—In year 1, States will spend a total of approximately 7.3 hours reading the new rule as it relates to BEA GDP data.</p> <p>\$288—In subsequent years, States will spend a total of approximately 3.6 hours re-reading the rule.</p>	<p>Informs States that FEMA may assess State fiscal capacity with this data point when TTR data is not available or if the TTR data don't reflect current fiscal capacity due to the two-year lag in the data.</p>
Per Capita Personal Income by Local Area, 44 CFR § 206.48(b)(1)(i)(C).	New	n/a	<p><i>Training:</i> \$1,682—In year 1, FEMA will spend approximately 24 hours to develop, review, and conduct training on the new factor and 0 hours and \$0 in subsequent years.</p>	<p><i>Training:</i> \$6,403—In year 1, States will spend a total of approximately 108 hours participating in the fiscal capacity factor training and 0 hours and \$0 in subsequent years.</p>	<p>Provides FEMA the flexibility to use information on the local fiscal capacity characteristics to judge IA needs in disaster affected areas.</p>

TABLE 5—IA DECLARATIONS FACTOR BASELINE AND MARGINAL ANALYSIS—Continued

Factor	Baseline: factors previously included in States' Dec. requests		Marginal analysis activity cost per year		Benefits
	Number of times	Percent	FEMA	States	
Other Factors, 44 CFR § 206.48(b)(1)(i)(D).	New	n/a	<p><i>Download Data:</i> \$21—In year 1, and subsequent years, FEMA will spend approximately 15–30 minutes to retrieving and storing BEA Per Capita Personal Income data (including data on all local areas in one retrieval). No new costs are included for reviewing the data. FEMA review of this data is offset by no longer having to review median household income.</p> <p>FEMA's time will vary and data will be used on a case-by-case basis as needed. Costs not estimated.</p>	<p><i>Download Data and Update Files:</i> \$4,289—In year 1, States will spend a total of approximately 108 hours retrieving and storing BEA Per Capita Personal Income data and updating templates to accommodate the new data. \$858—In subsequent years, States will spend a total of approximately 21.5 hours a year for retrieving and storing BEA Per Capita Personal Income data for their respective state. No new costs are included for reviewing the data. FEMA assumes that the review of this data is offset by no longer having to review median household income.</p> <p><i>Familiarization:</i> \$1,065—In year 1, States will spend a total of approximately 13.4 hours reading the new rule as it relates to BEA PCPI data. \$532—In subsequent years, States will spend a total of approximately 6.7 hours re-reading the rule.</p> <p>State time will vary and data will be used on a case-by-case basis as needed. Costs not estimated.</p>	Provides flexibility to use any other data or information on a State or local area's fiscal capacity to judge disaster needs in affected areas.
Resource Availability:					
State Tribal and Local Governmental Organizations (NGO) and Private Sector Activity, 44 CFR § 206.48(b)(1)(ii)(A).	76 of 85 total	89	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Cumulative Effect of Recent Disasters, 44 CFR § 206.48(b)(1)(ii)(B).	77 of 85 total	91	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Uninsured Home and Personal Property Losses:					
The cause of damage, 44 CFR § 206.48(b)(2)(i).	85 of 85 total	100	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
The jurisdictions impacted and concentration of damage, 44 CFR § 206.48(b)(2)(ii).	84 of 85 total	99	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
The number of homes impacted and degree of damage, 44 CFR § 206.48(b)(2)(iii).	76 of 85 total	89	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
The estimated cost of assistance, 44 CFR § 206.48(b)(2)(iv).	73 of 85 total	86	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
The homeowner-ship rate of impacted homes, 44 CFR § 206.48(b)(2)(v).	54 of 85 total	64	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
The percentage of affected households with insurance coverage appropriate to the peril, 44 CFR § 206.48(b)(2)(vi).	68 of 85 total	80	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.

TABLE 5—IA DECLARATIONS FACTOR BASELINE AND MARGINAL ANALYSIS—Continued

Factor	Baseline: factors previously included in States' Dec. requests		Marginal analysis activity cost per year		Benefits
	Number of times	Percent	FEMA	States	
Other relevant preliminary damage assessment data, 44 CFR § 206.48(b)(2)(vii).	States may provide any additional information they believe is pertinent to the declaration request		FEMA's time will vary and data will be used on a case-by-case basis as needed. Costs not estimated.	State time will vary and data will be used on a case-by-case basis as needed. Costs not estimated.	Clarification of current practice in regulation.
Disaster Impacted Population Profile:					
The percentage of the population for whom poverty status is determined, 44 CFR § 206.48(b)(3)(i).	71 of 85 total	84	\$0—No change in time burden due to current compliance, data collected in PDA process.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
The percentage of the population already receiving government assistance such as Supplemental Security Income and Supplemental Nutrition Assistance Program benefits, 44 CFR § 206.48(b)(3)(ii).	**4 of 85 total	5	\$0—No change in time burden due to current compliance, data collected in PDA process.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
The pre-disaster unemployment rate, 44 CFR § 206.48(b)(3)(iii).	58 of 85 total	68	\$0—No change in time burden due to current compliance, data collected in PDA process.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
The percentage of the population that is 65 years old and older, 44 CFR § 206.48(b)(3)(iv).	69 of 85 total	81	\$0—No change in time burden due to current compliance, data collected in PDA process.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
The percentage of the population 18 years old and younger, 44 CFR § 206.48(b)(3)(v).	**15 of 85 total	18	\$0—No change in time burden due to current compliance, data collected in PDA process.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
The percentage of the population with a disability, 44 CFR § 206.48(b)(3)(vi).	57 of 85 total	67	\$0—No change in time burden due to current compliance, data collected in PDA process.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
The percentage of the population who speak a language other than English and speak English less than "very well", 44 CFR § 206.48(b)(3)(vii).	**6 of 85 total	7	\$0—No change in time burden due to current compliance, data collected in PDA process.	\$0—No change in time burden due to current compliance, data collected in PDA process.	Clarification of current practice in regulation.
Any unique considerations regarding American Indian and Alaskan Native Tribal populations that may not be reflected in the U.S. Census Bureau data, 44 CFR § 206.48(b)(3)(viii).	**15 of 85 total	18	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Impact to Community Infrastructure:					
Life Saving and Life Sustaining Services, 44 CFR § 206.48(b)(4)(i).	71 of 85 total	84	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Essential Community Services, 44 CFR § 206.48(b)(4)(ii).	70 of 85 total	82	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Transportation Infrastructure and Utilities, 44 CFR § 206.48(b)(4)(iii).	73 of 85 total	86	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
Casualties: The number of missing, injured, or deceased individuals, 44 CFR § 206.48(b)(5).	59 of 85 total	69	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.

TABLE 5—IA DECLARATIONS FACTOR BASELINE AND MARGINAL ANALYSIS—Continued

Factor	Baseline: factors previously included in States' Dec. requests		Marginal analysis activity cost per year		Benefits
	Number of times	Percent	FEMA	States	
Disaster Related Unemployment: The number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance, 44 CFR § 206.48(b)(6). Summary of All Factors, 44 CFR § 206.48(b).	**34 of 85 total	40	\$0—No change in time burden due to current compliance.	\$0—No change in time burden due to current compliance.	Clarification of current practice in regulation.
	.....	.....	\$3,546 in year 1 and \$43 in subsequent annual reoccurring costs—Increased time burden due to the new factor, downloading and storing data, and training (year 1 only).	\$24,494 in year 1 and \$2,896 in subsequent annual reoccurring costs—Increased time burden due to the new factor, downloading and storing data and updating files, familiarization, and training (year 1 only).	Informs States with the information that FEMA considers when deciding whether to recommend an IA declaration to the President
	<i>Baseline: 85 total declaration requests examined.</i> <i>Marginal Effect of Final Rule: 4 New and 23 Previously Considered</i>				

* Activity Cost per Year captures training costs (development and presentation by FEMA; attendance by States) for both the NPRM outreach webinars and the final rule training webinars. FEMA is providing outreach and training webinars in response to a public comment requesting training on the new rule once finalized. Thus, FEMA has added the cost for these webinars to the analysis of this final rule. An Activity Cost per Year that is listed as "\$0" represents the incremental cost associated with codifying the factor in the final rule. As stated throughout, these factors were previously considered; thus, there is \$0 new cost, i.e. no marginal cost associated with codifying the factor.

** These factors are specific to demographic components that States do not frequently include in their disaster declaration requests. FEMA believes that when these factors are included in a request, it is because the affected State focuses on the vulnerability of that demographic component and its needs. For example, the population under 18 years of age is often included when schools have been damaged and special assistance is requested. Tribal concerns and the population that speaks English less than "very well" often are not included because these populations were not specifically focused on by the State. Post-disaster unemployment is often not included unless a specific industry which is key in the disaster impact area was severely affected. FEMA does not expect States to include every factor in every request, and anticipates States will continue to include these factors only where appropriate for the type and level of disaster.

8. Regulatory Alternatives

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

a. Voluntary, Faith and Community Based Organizations Resources

FEMA considered removing the factor under which FEMA would consider the availability of resources from voluntary, faith-based, and community-based organizations during disasters. Commenters suggested removing this factor because the available data about these resources may not accurately reflect actual resource availability for any given disaster. For instance, the availability of voluntary, faith-based, and community-based organizations may be limited by such organizations' financial circumstances, their donors' economic situations, and the circumstances of their volunteers. FEMA recognizes this concern, but believes that information on the activities of these organizations is

generally valuable because it can enhance the picture of disaster needs at a local level and may offset or reveal a need for supplemental Federal assistance. FEMA also recognizes that these organizations have limited resources and considers this point when determining the need for an IA declaration.

FEMA anticipates there could be impacts on transfer payments due to changes in the number of disaster declarations if resources available from voluntary, faith, and community based organizations were no longer considered. If FEMA were to remove this factor from consideration in major disaster declaration requests for IA, it could potentially result in either a decrease or an increase in transfer payments, depending on the situation. For example, if a State's voluntary agencies are overwhelmed, but the State declines to provide this information to FEMA as part of its declaration request, then FEMA might be less likely to find that Federal assistance is warranted. And if a State's voluntary agencies are providing ample assistance but the State declines to provide this information to FEMA as part of its declaration request, FEMA might be more likely than it otherwise would to find that Federal assistance is warranted.

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

FEMA evaluated the usefulness of the table at current 44 CFR 206.48(b)(6), which lists the average amount of IA based on State size. FEMA ultimately determined that the table causes confusion with stakeholders, sometimes resulting in the misimpression that the averages function as a threshold for whether a State should request IA. FEMA never intended the table to set a threshold of eligibility for IA. Rather, it is intended as guidance to States and voluntary agencies as they develop plans and programs to meet the needs of disaster survivors. Furthermore, the table has been interpreted by States to suggest that State population is the main factor, or the only factor, in determining State capability or fiscal capacity. Under this rule, FEMA will continue to consider various factors when making its recommendation. FEMA did not quantify the potential impacts of implementing this alternative, but assumed there would not be economic impacts from maintaining the table because other factors are already considered. FEMA has chosen to remove the table for clarification purposes.

c. Automatically Trigger Contiguous Counties and States

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

FEMA did not quantify the potential impacts of implementing this alternative, but acknowledges there could be an increase in transfer payments if FEMA automatically declared affected counties and States contiguous to a declared State or county. FEMA believes this alternative would increase transfer payments because specifics about damage information and resource capabilities of nearby counties would not be considered and contiguous counties could be provided assistance based on geographic proximity rather than demonstrated need.

d. Considering Negative Impact on Businesses

Commenters also recommended that FEMA consider including the impact of an incident on businesses in affected areas due to the potential loss of family income and the direct correlation to communities' recovery. Consistent with the proposed rule, FEMA included a factor in this rule that considers the impact to businesses by capturing the negative impacts to employers and employees who are disaster survivors.

See 44 CFR 206.48(b)(6). As part of information provided under this factor, the State may provide an estimate of the number of disaster survivors who lost work or became unemployed due to a disaster and who do not qualify for standard unemployment insurance, as well as information regarding major employers affected. The negative impact on the survivors may affect a community's ability to recover. This impact is captured in the Disaster Unemployment Assistance (DUA) factor, which provides information on the potential need for unemployment benefits and re-employment services to individuals who have become unemployed as a result of a major disaster and who are not eligible for regular State unemployment insurance. See *id.*; see also 44 CFR 206.141.

Business losses alone will not result in a Presidential major disaster declaration that authorizes IA because the IA grant programs do not provide assistance to businesses. Instead, FEMA considers the effect that business disruptions have on disaster survivors. For example, if disaster survivors lose work or become unemployed due to business impacts from a disaster, this information may highlight an increased need for DUA. In addition, the SBA has separate statutory authority and programs, which may be available to assist businesses regardless of whether the President has issued a major disaster declaration.

FEMA did not quantify the impacts of the alternative considering business losses separately from business impacts to disaster survivors because FEMA cannot provide assistance for business losses.

e. Linking Individual Assistance Cost Factor With Public Assistance (PA) Cost Factor

Commenters also recommended that FEMA consider aligning the financial indicators for IA and PA major disaster declarations. Commenters asked why a financial indicator could not be used for IA since FEMA evaluates whether a State is eligible for PA based on a financial indicator. Currently, FEMA evaluates the need for a PA major disaster declaration using the estimated cost of Federal and non-Federal public assistance per capita (*i.e.*, against the statewide population). 44 CFR 206.48(a)(1). That factor also establishes a \$1 million threshold, based on the proposition that even States with the smallest populations have the capability to cover that level of infrastructure damage. Under FEMA's current regulations, there is no corresponding IA single indicator designed to evaluate

the total cost of the disaster against the capability of a requesting State.

Since the per capita indicator was initially adopted in 1986, it has lost its relation to both of the metrics upon which it was first calculated. In 1986, per capita personal income (PCPI) in the United States was \$11,687. By 2015, PCPI had risen to \$48,112, an increase of over 300 percent. FEMA has applied inflation adjustments since 1999, and the per capita indicator has risen by just 41 percent over that same period.

The Public Assistance per capita indicator has also fallen short of keeping pace with State general fund expenditures. According to the National Association of State Budget Officers (NASBO), State general fund spending in 2015 totaled \$759.4 billion. Collectively, the States' per capita indicators equaled \$435.3 million in 2015. Consequently, the relation of the per capita indicator to State general fund expenditures is just 57 percent of what it was in 1986.

The failure of the per capita indicator to keep pace with changing economic conditions and the increasing frequency and costs of disasters has led to criticism of the per capita indicator. Those critiques have emphasized that the per capita indicator is artificially low. Many have called for FEMA to find ways to decrease the frequency of disaster declarations and Federal disaster costs, by increasing the per capita indicator to transfer costs back to State and local jurisdictions. These have included recommendations from GAO, reports of the DHS OIG, and proposed legislation. FEMA is currently evaluating possible alternatives to the per capita indicator. See, *e.g.*, 82 FR 4064 (Jan. 12, 2017).

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

f. Use of Factor Thresholds

Some stakeholders indicated they would prefer specific "hard" thresholds that indicate whether a State would be eligible to receive a major disaster declaration authorizing IA. The

stakeholders felt established thresholds give States a clear idea of what level of damage and need the State must have before requesting assistance. Further, the stakeholders believed thresholds would prevent States from spending the time compiling the data and requesting a declaration when they have not sustained enough damage to qualify for a major disaster declaration that authorizes IA.

FEMA rejected a threshold indicator because it is inconsistent with the principles of Section 320 of the Stafford Act which prohibits the denial of assistance to a geographic area based solely on the use of an arithmetic formula or a sliding scale based on income or population. 42 U.S.C. 5163. FEMA believes that a systematic and objective approach using standardized factors is important for making informed and consistent recommendations to the President as well as enhancing predictability for a State when they request IA. FEMA also decided to not pursue using thresholds because they are too restrictive for determining whether disaster survivors need assistance after an event and are not flexible enough to assess the various scenarios that demonstrate the State's need for a declaration authorizing IA. FEMA assumes this alternative could have an impact on transfer payments due to changes in the number of declarations and could reduce States' costs if they chose not to pursue a declaration request for IA.

g. Homes in Foreclosure

Some stakeholders expressed concern that if an area with a high foreclosure rate is affected by a disaster, then these homes would be a greater burden to the State during the recovery process. Stakeholders believed that homes in foreclosure (either abandoned or owned by the bank) are not taken care of as well as homes that are owner-occupied. When the home is owned by the bank, there may be little incentive to quickly make the repairs. When it is abandoned, there is no incentive to make the repairs and the properties are often abated by the community through code enforcement, which likely translates to additional costs and time burden on the community.

FEMA recognizes that high levels of foreclosure may be associated with economic difficulties in the affected area and this could negatively impact a community's ability to recover. However, FEMA's IA programs do not provide any form of assistance for foreclosed homes; repair assistance is available only for owner-occupied primary residences. If a State believes

the number of homes in foreclosure will impact their capability to respond to the disaster, then the State may articulate this concern in the narrative portion of its declaration request. FEMA considers all relevant information provided in a State's request. *See* 44 CFR 206.48. However, FEMA believes other factors, including poverty level, pre-disaster unemployment, and per capita personal income are adequate indicators of economic health. For this reason, FEMA chose to not include home foreclosure rates as an evaluation factor.

h. Do Not Include Fiscal Capacity Indicators

FEMA considered the alternative of not including fiscal capacity indicators. FEMA chose to include the fiscal capacity indicators for the reasons set forth above. The Stafford Act is premised upon State and local governments handling response and recovery to disasters that are within their capability, with the Federal government only stepping in with supplemental assistance for events that are beyond local and then State capability. This necessarily requires an examination of the capability of the State government. Given that the supplemental assistance that FEMA provides is overwhelmingly in the form of financial assistance, it is important to determine whether a given event is within, or should be within, the State's fiscal capacity. If FEMA were not to include the fiscal capacity indicators it would be forced to rely on population as a proxy. In addition, FEMA would continue to utilize the inadequate and outdated table found at 44 CFR 206.48(b)(6) which divides States into three buckets (small, medium, and large) based solely on population size instead of a more individualized look at each State's fiscal resources and capability. In this alternative, the Federal cost of the final rule is estimated to decrease by approximately \$43 a year, based on FEMA no longer having to retrieve BEA and Treasury data. The cost to States is estimated to decrease by approximately \$8,935 in year 1 and \$1,787 in each subsequent year for the same reason.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA must consider the impact of this rule on small entities. The term "small entities" includes small businesses; not-for-profit organizations that are independently owned and operated and are not

dominant in their fields; and governmental jurisdictions with populations of less than 50,000. When the Administrative Procedure Act requires an agency to publish a notice of proposed rulemaking under 5 U.S.C. 553, the RFA requires a regulatory flexibility analysis for both the proposed rule and the final rule. This requirement does not apply if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). Such certification must include a statement providing the factual basis for such certification.

This final rule provides States with factors FEMA will consider when making a recommendation on a major disaster declaration that authorizes IA. The rule codifies many factors that are currently considered, but are not adequately captured in 44 CFR 206.48(b). This rule will not directly impact small businesses, small not-for-profit organizations, or small governmental jurisdictions. States are not considered small entities under the RFA because they have populations of more than 50,000.⁶² Hence, FEMA certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571, pertains to any notice of proposed rulemaking which implements any rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. FEMA has determined this rule can be excluded from this assessment because the 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

⁶² The District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, which are considered States under 44 CFR 206.2(a)(22), all have populations greater than 50,000.

government.” Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. National Environmental Policy Act

Under the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 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 final rule amends an existing regulation without changing its environmental effect, which meets Categorical Exclusion A3(d).

In addition, this final rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. This activity amounts to information and data gathering and reporting in support of emergency and disaster response and recovery activities. Therefore, the activity this final rule applies to meets Categorical Exclusion M11 in 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. 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

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.), FEMA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

In this final rule, FEMA is seeking a revision to the already existing collection of information, OMB Control Number 1660-0009, because FEMA has refined its estimate of the paperwork burden associated with 1660-0009. FEMA submitted the information collection abstracted below to the Office of Management and Budget for review and clearance.

Collection of Information

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

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

OMB Number: 1660-0009.

Form Titles and Numbers: FEMA Form 010-0-13, Request for Presidential Disaster Declaration Major Disaster or Emergency; FEMA Form 009-0-140.

Abstract: When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence,

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

Affected Public: State, local, or Tribal Government.

Estimated Number of Respondents: 623.

Estimated Number of Responses: 356.
Estimated Total Annual Burden Hours: 11,792.8.

The previously approved Total Annual Burden Hours was 11,748 hours. Based on the final rule’s minor increase in burden, the new estimated Total Annual Burden Hours is 11,792.8 hours. This increase of 44.8 hours is attributed to the additional fiscal capacity information FEMA anticipates States may provide to help evaluate the need for a major disaster declaration that authorizes IA.

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

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS⁶³

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent ⁶⁴	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate ⁶⁵	Total annual respondent cost
State, Local or Tribal Government.	Request for Presidential Disaster Declaration Major Disaster or Emergency/ FEMA Form 010-0-13.	623	.571	9	3,204	\$79.22	\$253,820.88

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS⁶³—Continued

Type of respondent	Form name/form number	Number of respondents	Number of responses per respondent ⁶⁴	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate ⁶⁵	Total annual respondent cost
State, Local or Tribal Government.	Initial Data Gathering for Governor's Request/ No Form.	623	.571	24.126	8,588.8	39.89	342,607.23
Total .....	.....	623	.....	.....	11,792.8	.....	596,428.11

Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.46 multiplier to reflect a fully-loaded wage rate.

Note: Numbers in the table are rounded up due to rounding in ROCIS. Also "Initial Data Gathering for Governor's Request/No Form" total burden hours is rounded to 8,588.8 to align with Factors Considered When Evaluating a Governor's Request for Individual Assistance for a Major Disaster Final Rule.

Estimated Cost: \$596,428.11.

Estimated Respondents' Operation and Maintenance Costs: FEMA does not anticipate that there will be any annual costs to respondents' operations and maintenance costs for technical services.

Estimated Respondents' Capital and Start-Up Costs: There are no annual start-up or capital costs.

Estimated Total Annual Cost to the Federal Government: The cost to the Federal government is \$3,188,919.80.

F. Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A "record" is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A "system of records" is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot

disclose any record which is contained in a system of records except by following specific procedures.

FEMA completed a Privacy Threshold Analysis for this final rule. Any information will be collected in existing FEMA Forms 010-0-13 and 009-0-140 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. FEMA Form 010-0-13 is currently covered under the DHS/FEMA/PIA-013 Grants Management PIA. This rulemaking does not impact FEMA's collection of PII in the disaster declarations process and form and no 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.

FEMA has reviewed this final rule under Executive Order 13175 and has determined that this rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the

Federal Government and Indian Tribes. The disaster assistance granted by a major disaster declaration addressed by this final rule is provided to individuals and families, and would not have tribal implications.

Moreover, this rule finalizes revisions to regulations intended to address a State's request for an IA declaration. Although Section 1110 of SRIA authorizes Indian Tribal governments to request a declaration directly, SRIA charged FEMA to implement that authority separately by rulemaking. FEMA is implementing Section 1110 through a separate process, which involves extensive consultation with Tribes, issuance of pilot guidance, see 82 FR 3016 (Jan. 10, 2017), and eventually, regulations.

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.

As we noted in the proposed rule, FEMA has determined that this rule does not have a substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive

⁶³ Note: Numbers rounded due to rounding in ROCIS.

⁶⁴ Note: The number of responses per respondent for entering in Request for Presidential Disaster Declaration Major Disaster or Emergency/FEMA Form 010-0-13 has been updated to 0.571. FEMA recalculated this number to more accurately reflect the change in the final rule. FEMA calculated 0.571 based on the previous supporting statement's total number of response hours, 3,195, divided by the number of hours, 9,062, resulting in 356, and then divided by 623.

⁶⁵ Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.46 multiplier to reflect a fully-loaded wage rate.

Order. The disaster assistance granted by a major disaster declaration addressed by this final rule is provided to individuals and families, and would not have federalism implications. No commenters disagreed with our determination.

I. Executive Order 11988, Floodplain Management

Pursuant to Executive Order 11988, as amended by Executive Order 13690, “each agency must provide leadership and take action to reduce the risk of flood loss and to minimize the impact of floods on human safety, health and welfare. In addition, each agency must restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation in order to minimize potential harm to or within the floodplain, consistent with the agency’s floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The requirements of Executive Order 11988 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting a floodplain(s). The changes in this final rule will not have

an effect on floodplain management. This final rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA’s IA Program. When FEMA undertakes specific actions in administering IA that may have effects on floodplain management (e.g., placement of manufactured housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction; Multi-Family Lease and Repair; financial assistance for privately owned roads and bridges), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order. The notice that is required by the E.O. is provided separately at the time FEMA undertakes the specific action.

J. Executive Order 11990, Protection of Wetlands

Executive Order 11990, “Protection of Wetlands,” 42 FR 26961, May 24, 1977, sets forth that each agency must provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency’s responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal’s effect on the survival and quality of the wetlands. Among these factors are: Public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation

and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities, as well as conducting Federal programs affecting land use. The changes in this final rule will not have an effect on land use or wetlands. This final rule revises the criteria that FEMA considers when recommending an area eligible for IA under a major disaster declaration. A major disaster declaration recommendation to the President is an administrative action for FEMA’s IA Program. When FEMA undertakes specific actions in administering IA that may have such effects (e.g., placement of manufactured housing units on FEMA-constructed group sites; permanent or semi-permanent housing construction; Multi-Family Lease and Repair; financial assistance for privately owned roads and bridges), FEMA follows the procedures set forth in 44 CFR part 9 to assure compliance with this Executive Order.

K. Executive Order 12898, Environmental Justice

Under Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,” 59 FR 7629, February 16, 1994, as amended by Executive Order 12948, 60 FR 6381, February 1, 1995, FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin. FEMA has incorporated environmental justice into its programs, policies, and activities, as well as this rulemaking. This final rule contains provisions that ensure that FEMA’s activities will not have a disproportionately high or adverse effect on human health or the environment or subject persons to discrimination because of race, color, or national origin. This final rule adds a provision specifically related to the

demographics of a disaster impacted population. FEMA is requesting information relating to the demographics of a disaster impacted area because the demographics may identify additional needs that require a more robust community response and might otherwise delay a community's ability to recover from a disaster.

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

L. Congressional Review of Agency Rulemaking

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any cost-benefit analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders.

FEMA has sent this rule to the Congress and to GAO pursuant to the CRA. The rule is not a "major rule" within the meaning of the CRA. It will not have an annual effect on the economy of \$100,000,000 or more, it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects in 44 CFR Part 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, and Reporting and recordkeeping requirements.

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

PART 206—FEDERAL DISASTER ASSISTANCE

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

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

■ 2. In § 206.48, revise paragraph (b) to read as follows:

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

* * * * *

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

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

(i) *Fiscal capacity (principal factor for individuals and households program).* Fiscal capacity is a State's potential ability to raise revenue from its own sources to respond to and recover from a disaster. The following data points are indicators of fiscal capacity.

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

(B) *Gross domestic product (GDP) by State.* GDP by State is calculated by the

Bureau of Economic Analysis. GDP by State may be used as an alternative or supplemental evaluation method to TTR.

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

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

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

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

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

(2) *Uninsured home and personal property losses (principal factor for individuals and households program).* Uninsured home and personal property losses may suggest a need for supplemental Federal assistance. The State may provide the following preliminary damage assessment data:

(i) The cause of damage.

(ii) The jurisdictions impacted and concentration of damage.

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

(iv) The estimated cost of assistance.

(v) The homeownership rate of impacted homes.

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

(vii) Other relevant preliminary damage assessment data.

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

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

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

(iii) The pre-disaster unemployment rate.

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

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

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

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

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

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

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

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

(iii) *Transportation infrastructure and utilities.* Transportation infrastructure or

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

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

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

Peter Gaynor,

Deputy Administrator, Federal Emergency Management Agency.

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