

TABLE 1 TO PARAGRAPH (a)(9)(v)—NEGATIVE DECLARATIONS FOR THE 2015 OZONE NAAQS—Continued

CTG document No.	Title	Adopted: 01/25/2021 Submitted: 03/23/2021 SIP Approved: 08/03/2022
EPA 453/R-08-003 .....	Miscellaneous Metal and Plastic Parts Coatings; Table 4—Automotive/Transportation and Business Machine Plastic Parts.	X
EPA 453/R-08-003 .....	Miscellaneous Metal and Plastic Parts Coatings; Table 5—Pleasure Craft Surface Coating.	X
EPA 453/R-08-003 .....	Miscellaneous Metal and Plastic Parts Coatings; Table 6—Motor Vehicle Materials	X
EPA 453/R-08-004 .....	Fiberglass Boat Manufacturing Materials .....	X
EPA 453/R-08-005 .....	Miscellaneous Industrial Adhesives .....	X
EPA 453/R-08-006 .....	Automobile and Light-Duty Truck Assembly Coatings .....	X
EPA 453/B-16-001 .....	Oil and Natural Gas Industry .....	X
—N/A— .....	Major non-CTG sources of VOC .....	X
—N/A— .....	Major sources of NO <sub>x</sub> .....	X

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 206**

[Docket ID FEMA-2022-0020]

RIN 1660-AB10

**Public Assistance Program’s Simplified Procedures Large Project Threshold**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is revising its regulations governing the Public Assistance program that provides grants to State, local, Tribal, and territorial governments, as well as eligible private nonprofit organizations, for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged facilities after a presidentially-declared major disaster to update the monetary threshold for when FEMA will process an application using “simplified procedures.”

**DATES:** This rule is effective August 3, 2022. Comments must be received on or before October 3, 2022.

**ADDRESSES:** The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that website’s instructions.

**FOR FURTHER INFORMATION CONTACT:** Tod Wells, Recovery Directorate, Federal

Emergency Management Agency, 500 C Street SW, Washington, DC 20472, [Tod.Wells@fema.dhs.gov](mailto:Tod.Wells@fema.dhs.gov), (202) 646-3834. Persons with speech or hearing difficulties may reach this number via teletype at 711.

**SUPPLEMENTARY INFORMATION:**

**1. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA-2022-0020, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal e-Rulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. For more information about privacy and the docket, see 83 FR 48645.

*Viewing comments and documents:* For access to the docket to read background documents or comments received, go to the Federal e-Rulemaking Portal at <http://www.regulations.gov>.

**2. Background and Discussion of Rule**

FEMA’s Public Assistance (PA) program provides grants to State, local, Tribal, and territorial governments, as well as eligible private nonprofit (PNP) organizations, for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged facilities after a Presidential-declared major disaster.<sup>1</sup> FEMA categorizes each grant award as

<sup>1</sup> The PA program is authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5170b, 5172, 5173, 5192.

either a small or large project,<sup>2</sup> which is determined by a monetary threshold set each year by FEMA pursuant to statute. See section 422 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), codified at 42 U.S.C. 5189.<sup>3</sup> FEMA obligates money for a small project based on an estimate of the project costs, and FEMA obligates money for a large project based on actual project costs as the project progresses and cost documentation is provided to FEMA.<sup>4</sup>

In 2013, the Sandy Recovery Improvement Act (SRIA)<sup>5</sup> amended section 422(b) of the Stafford Act and required FEMA to complete an analysis to determine whether an increase in the large project threshold was appropriate and submit to Congress a report on its findings not later than one year after January 29, 2013.<sup>6</sup> On January 29, 2014, FEMA submitted its report to Congress, which recommended increasing the maximum threshold from \$68,500<sup>7</sup> to \$120,000.<sup>8</sup> Section 422(b)(2) of the Stafford Act required FEMA to implement the new threshold “immediately” following submission of the report to Congress, “without regard

<sup>2</sup> A project is a logical grouping of work required as a result of the declared major disaster or emergency and may include eligible work at several sites. See 44 CFR 206.201(k); FEMA Policy 104-009-2, *Public Assistance Program and Policy Guide*, v.4 (PAPPG), pp. 60-63 (June 1, 2020), available at [https://www.fema.gov/sites/default/files/documents/fema\\_pappg-v4-updated-links\\_policy\\_6-1-2020.pdf](https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf).

<sup>3</sup> See also 44 CFR 206.203(c), 206.205. FEMA obligates money for a small project based on an estimate of the project costs; FEMA obligates money for a large project based on actual project costs as the project progresses and cost documentation is provided to FEMA.

<sup>4</sup> See 44 CFR 206.203(c); PAPPG, pp. 199-202.

<sup>5</sup> Public Law 113-2, section 1107.

<sup>6</sup> 42 U.S.C. 5189(b)(1).

<sup>7</sup> The large project threshold for Fiscal Year (FY) 2014. 78 FR 64232 (Oct. 28, 2013). See also <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>.

<sup>8</sup> A copy of this report is on [regulations.gov](http://www.regulations.gov) under docket ID FEMA-2014-0009.

to chapter 5 of title 5” of the United States Code, on Administrative Procedure, which includes a section on Rule making,<sup>9</sup> (see Section 3.A below) and to adjust the threshold annually to reflect changes in the Department of Labor’s Consumer Price Index for Urban Consumers (CPI-U).<sup>10</sup> Following submission of its report, FEMA published a final rule updating the maximum threshold to \$120,000.<sup>11</sup>

In addition to the final rule, FEMA published a notice requesting comments from the public regarding the report that justified the increase.<sup>12</sup> FEMA received 19 public comments, 18 of which were from 16 States.<sup>13</sup> Of these, eight States<sup>14</sup> supported increasing the maximum threshold. Commenters noted benefits of the updated maximum threshold, such as increased State/local control over funding and decreased documentation burden, time, and expenses in administering PA grants, especially regarding reduced need for final reconciliation of actual costs, final inspections, funding increase requests, and monitoring. Commenters also noted that the ability to immediately disburse 75 percent of project costs after obligation will help expedite recovery in affected areas.

Five States<sup>15</sup> opposed increasing the maximum threshold. Indiana noted that its State Administrative Plan requires reconciliation of costs, and that it performs audits in accordance with the Single Audit Act.<sup>16</sup> Neither of these requirements should prevent adoption of an increase to the threshold. All non-Federal entities that expend \$750,000 or more during the non-Federal entity’s fiscal year in Federal awards are subject to the Single Audit Act and must have a single or program-specific audit

conducted for that year in accordance with the provisions 2 CFR part 200.<sup>17</sup> The scope of the audits are to ensure that non-Federal entities have complied with Federal statutes, regulations, and the terms and conditions of Federal awards.<sup>18</sup> The State Administrative Plan each State is required to have for the PA program refers back to the audit procedures in 2 CFR part 200 and should be updated annually.<sup>19</sup> This rule will change FEMA’s regulations and the terms and conditions of PA grants with respect to the large project threshold. That means there will be no impact to States with respect to any Federal auditing requirements. It appears that this has since been understood and adopted by the State of Indiana; FEMA reviewed Indiana’s 2021 State Administrative Plan and determined that it only requires reconciliation of costs for large projects.

North Carolina expressed concern that an increase in the maximum threshold may increase the frequency of cost overruns and underruns, putting additional pressure on recipients to ensure that estimates are accurate. Since 2014, FEMA has taken concerns about the accuracy of its estimates into consideration, and has adopted changes within the PA program that have significantly improved, streamlined, and centralized its cost estimating process to establish more consistent estimating across all regions and disasters. This has resulted in continued improvements to the accuracy of all its estimates.<sup>20</sup>

Arizona stated that it has a statutory requirement to audit all projects, and also noted that fronting a larger Federal

share based on estimates could increase its burden when the estimated costs of a subrecipient’s project differ from actual costs. FEMA reviewed Arizona’s 2021 State Administrative Plan and, similar to Indiana, it appears that Arizona no longer has the statutory requirement because its 2021 Plan only requires reconciliation of costs for large projects. Arizona also objected to FEMA’s implementing the change in threshold without prior consultation with the States. However, Congress explicitly directed FEMA to “immediately” establish the threshold “without regard to chapter 5 of title 5” of the United States Code. 42 U.S.C. 5189(b)(2)(A). As a result, FEMA immediately implemented the updated threshold in 2014 without seeking prior public comment, but sought post-promulgation comments on the report. FEMA intends to reach out specifically to the five States who objected in 2014 to ensure that they understand how to implement the increase and issue clarifying guidance, if necessary.

Ohio and Pennsylvania both commented that because they pay for 25 percent of projects (through the cost share), they were unlikely to change their procedures in order to ensure reconciliation.<sup>21</sup> FEMA acknowledges that many States have their own requirements to reconcile all project costs, and may wish to ensure that local governments have a higher level of accuracy when completing PA projects based on the State’s 25 percent contribution to their projects. While FEMA lacks control over what rules States may impose upon themselves, FEMA notes that the current threshold has failed to keep pace with the PA program’s increased disaster spending, and increasing the threshold would greatly reduce the administrative burden and resources spent by FEMA and recipients without audit requirements. This reduction in administrative burden would result in expedited funding, facilitating quicker recovery in these areas. That some recipients impose upon themselves rules that may ultimately prevent their recovery in the most expedited manner does not mean that FEMA should deprive all recipients of the opportunity to expedite recovery.

Congress enacted section 422 of the Stafford Act to increase the administrative efficiency of the PA program. The simplified procedures authorized under section 422 allow FEMA to award funding for projects

<sup>9</sup> 5 U.S.C. 553.

<sup>10</sup> 42 U.S.C. 5189(b)(2).

<sup>11</sup> 79 FR 10686 (Feb. 26, 2014).

<sup>12</sup> 79 FR 68899 (Nov. 19, 2014).

<sup>13</sup> FEMA received 18 comments from the following States: Alaska, Arizona, Arkansas, Idaho, Indiana, Kansas, New Jersey, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Washington, and Wisconsin. (Alaska and Kansas each submitted two comments). FEMA received one comment from a private citizen from California.

<sup>14</sup> South Carolina (FEMA–2014–0009–0005); Idaho (FEMA–2014–0009–0007); New Jersey (FEMA–2014–0009–0009); Oregon (FEMA–2014–0009–0010); Wisconsin (FEMA–2014–0009–0011); Arkansas (FEMA–2014–0009–0012); Alaska (FEMA–2014–0009–0020 and FEMA–2014–0009–0022); and Washington (FEMA–2014–0009–0021).

<sup>15</sup> Indiana (FEMA–2014–0009–0013); Arizona (FEMA–2014–0009–0014); Ohio (FEMA–2014–0009–0015); North Carolina (FEMA–2014–0009–0017); and Pennsylvania (FEMA–2014–0009–0018).

<sup>16</sup> The Single Audit Act, passed by Congress in 1984, requires most governmental recipients of Federal assistance to have annual financial or compliance audits. See 31 U.S.C. 7501 *et seq.*

<sup>17</sup> 2 CFR 200.501(a).

<sup>18</sup> 2 CFR 200.514(d).

<sup>19</sup> 44 CFR 206.207(b)(1)(iii)(H); 44 CFR 206.207(b)(3).

<sup>20</sup> To ensure that the estimation process is accurate, FEMA also conducted an analysis on Net Small Project Overruns (NSPOs), the process by which a subrecipient requests additional funding through the PA appeals process if its total cost incurred for all of its small projects exceeds the total amount FEMA obligated for those projects. The analysis showed that out of 627,656 total obligated small projects since 1997, there were only 20 instances of second appeal NSPOs (0.003 percent). Additionally, out of 137,913 total obligated small projects since 2013, there were only 70 instances of first appeal NSPOs (0.05 percent). Small projects make up a significant majority of the PA project universe; for example, since the adoption of the National PA Delivery Model in 2017, 45,944 out of 59,178 total projects were small projects, making up 78 percent of the total number of PA projects in that time. The number of first and second NSPO appeals in relation to the total number of small projects is not statistically significant. This indicates that the funding FEMA provides for small projects is, by and large, sufficient for applicants to complete all of their small projects. A copy of this report is on regulations.gov under docket ID FEMA–2014–0009.

<sup>21</sup> Ohio also noted, however, that good quality Project Worksheets (PWs) and clear scopes of work would likely reduce its administrative costs.

under the threshold based on estimates, simplifying final accounting and project closeout procedures. This expedites FEMA's processing of PA grant funding by eliminating much of the administrative burden that FEMA experiences when awarding projects at or above the threshold (*i.e.*, large projects), ultimately reducing FEMA's cost of administering PA funding. PA projects beneath the established threshold represent the vast majority of individual projects, but a small portion of FEMA's overall funding under the PA program. These procedures, therefore, allow FEMA to expedite its provision of Federal disaster assistance, saving FEMA, and by extension, the American taxpayer, time and money on small projects, but still provide financial oversight for the majority of funding provided under the PA program. Moreover, States without statutory audit requirements<sup>22</sup> will also benefit from these efficiencies in their administration of PA grants.

In 1988, when Congress set the original threshold at \$35,000, it noted that "damage survey reports of less than \$35,000 have constituted 95% of all damage survey reports but only 32% of all expended dollars."<sup>23</sup> Congress envisioned that these simplified procedures would allow ". . . [applicants] [to] receive an amount estimated by the Federal Government . . . rather than the standard—and sometimes cumbersome—procedure of performing audits and inspections to verify the cost of an eligibility for payment of the costs of the work."<sup>24</sup> Congress believed that this more streamlined approach would "result in substantial savings of time and money that . . . should have a significant and beneficial impact on FEMA's overall program."<sup>25</sup> Through the SRIA amendments to section 422(b), Congress again highlighted the importance of the administrative efficiency of the PA program when it directed FEMA to determine whether an increase in the threshold was appropriate and to review

the threshold every three years.<sup>26</sup> FEMA is mindful both of Congress' efforts to improve administrative efficiency of the program and its responsibility to be fiscal stewards of public funding.

Following 2014, FEMA continued to adjust the threshold annually to reflect changes in the CPI-U, as required under section 422(b)(2).<sup>27</sup> Section 422(b)(3) requires FEMA to review the threshold every three years.<sup>28</sup> FEMA conducted an analysis in 2017 and recommended no change to the threshold at that time.<sup>29</sup> As a result, FEMA has only made annual CPI-U adjustments to the threshold since then.<sup>30</sup>

Since FEMA's analysis in 2017, the United States has seen increased disaster activity either due to, or amplified or aggravated by, the climate crisis. For example, in 2017, Hurricanes Harvey, Irma, and Maria caused a combined total of \$294.2 billion in damages,<sup>31</sup> with FEMA providing over \$49.9 billion in PA funding for these disasters.<sup>32</sup> Damages from wildfires in that year and the next totaled approximately \$46.2 billion;<sup>33</sup> FEMA provided over \$742 million in PA

funding for the 2017 wildfires.<sup>34</sup> In 2020, FEMA responded to 22 events with losses exceeding \$1 billion—the highest in its history—which included a record number of tropical storms in the Atlantic and the Nation's most active wildfire year recorded.<sup>35</sup> The estimated damages from these 22 events totaled approximately \$95 billion, with over \$6.5 billion comprising FEMA's share of non-COVID related PA funding.<sup>36</sup>

In addition to increased natural disasters, in 2020 FEMA also issued an unprecedented 57 major disaster declarations in response to COVID-19,<sup>37</sup> including every State, 5 territories, the Seminole Tribe of Florida, and the District of Columbia.<sup>38</sup> Defeating COVID-19 remains the Administration's top public health priority. As of January 24, 2022, the Nation has lost more than 869,000 lives to COVID-19, which has particularly affected vulnerable populations who are at the highest risk of infection and adverse outcomes. It is the policy of the United States to prioritize and invest in the Nation's public health system to address health disparities that have been exposed and worsened by COVID-19 and build a stronger public health system that allows us to be ready for the next virus.<sup>39</sup> In line with the goal of defeating the pandemic, the President directed FEMA to expand financial support of State, local, Tribal, and territorial partners by increasing the Federal cost share under PA to 100 percent to ensure safe re-opening.<sup>40</sup> FEMA also

<sup>26</sup> In 2013, the number of projects beneath the threshold had decreased from 95 percent (1988) to 88 percent.

<sup>27</sup> 42 U.S.C. 5189(b)(2). FEMA publishes the annual adjustments to the large project threshold at <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>. For more information on the National PA Delivery Model, see the Public Assistance Delivery Model Fact Sheet (Aug. 17, 2018), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_pa\\_delivery-model\\_factsheet.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_pa_delivery-model_factsheet.pdf).

<sup>28</sup> 42 U.S.C. 5189(b)(3).

<sup>29</sup> A copy of this analysis is on [regulations.gov](https://www.regulations.gov) under docket ID FEMA-2022-0020. During the period of 2014–2017, FEMA saw fewer disasters and, as a result, decreased disaster spending. Compared to FY 2013, when FEMA spent a total of \$18.4 billion on recovery, FEMA spent under \$2 billion annually in FYs 2014 to 2017.

<sup>30</sup> The current threshold, for Fiscal Year 2022, is \$139,800. 86 FR 63040 (Nov. 15, 2021); see also FEMA, Per Capita Impact Indicator and Project Thresholds, <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator> (accessed Nov. 3, 2021). Note, however, that the analysis included in this rule was conducted based on the Fiscal Year 2021 threshold of \$132,800. See 85 FR 69639 (Nov. 3, 2020).

<sup>31</sup> See National Oceanic & Atmospheric Administration (NOAA), National Centers for Environmental Information (NCEI), *Billion-Dollar Weather and Climate Disasters: Events*, <https://www.ncdc.noaa.gov/billions/events/US/1980-2021> (accessed Nov. 3, 2021); see also <https://www.washingtonpost.com/news/energy-environment/wp/2018/01/08/hurricanes-wildfires-made-2017-the-most-costly-u-s-disaster-year-on-record/>.

<sup>32</sup> This estimate of PA funding is based on data from FEMA's Emergency Management Mission Integrated Environment (EMMIE) Enterprise Data Warehouse, as of Dec. 10, 2021.

<sup>33</sup> See NOAA NCEI, *Billion-Dollar Weather and Climate Disasters: Events*, <https://www.ncdc.noaa.gov/billions/events/US/1980-2021> (accessed Nov. 3, 2021).

<sup>34</sup> This estimate of PA funding is based on data from FEMA's EMMIE Enterprise Data Warehouse, as of Dec. 10, 2021.

<sup>35</sup> See National Oceanic and Atmospheric Administration, "Record Number of Billion-Dollar Disasters Struck U.S. in 2020, Jan. 8, 2021, available at <https://www.noaa.gov/stories/record-number-of-billion-dollar-disasters-struck-us-in-2020> (last accessed Nov. 3, 2021).

<sup>36</sup> *Id.* The estimate of PA funding is based on data from FEMA's EMMIE Enterprise Data Warehouse, as of Dec. 10, 2021.

<sup>37</sup> COVID-19 is a communicable disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), that was first identified as the cause of an outbreak of respiratory illness that began in Wuhan, Hubei Province, People's Republic of China. On March 13, 2020, the President declared a nationwide emergency under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, authorizing FEMA to provide assistance for emergency protective measures to respond to the COVID-19 pandemic. COVID-19 Emergency Declaration available at <https://www.fema.gov/news-release/2020/03/13/covid-19-emergency-declaration> (accessed Dec. 15, 2020).

<sup>38</sup> See <https://www.fema.gov/disasters/> (accessed Dec. 15, 2020).

<sup>39</sup> Proclamation 10175 of April 5, 2021, "National Public Health Week, 2021," 86 FR 18171 (Apr. 8, 2021).

<sup>40</sup> See Memorandum of February 2, 2021, "Maximizing Assistance From the Federal

<sup>22</sup> States without audit requirements that supported the increase were Oregon (FEMA-2014-0009-0010); Arkansas (FEMA-2014-0009-0011); and Alaska (FEMA-2014-0009-0020 and FEMA-2014-0009-0022). Idaho (FEMA-2014-0009-0007), which reconciles actual costs on all projects, also supported the increase, as did South Carolina (FEMA-2014-0009-0005), which reconciles actual costs on 20 percent of small projects (and all large projects).

<sup>23</sup> See H.R. REP. NO. 100-517 (1988), p. 11. "Damage survey reports" is the former name of PA project worksheets.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

participates in the White House's COVID-19 Pandemic Testing Board, which coordinates the Federal Government's efforts to promote COVID-19 testing and identifies barriers to increase testing among priority populations and high-risk groups,<sup>41</sup> and has helped vaccinate more than 200 million Americans.<sup>42</sup>

In Fiscal Year 2020 declarations, FEMA's funding under the PA program is over \$35.9 billion. Although costs for COVID-19 accounted for 93 percent of this funding,<sup>43</sup> as climate change continues to make natural disasters more frequent and more destructive, FEMA expects even greater spending on recovery will be required in the future.<sup>44</sup>

In 2020, FEMA conducted another analysis to ensure that FEMA is maximizing the benefits of simplified procedures in light of its more recent disaster spending, while also effectively managing risk associated with the provision of Federal disaster assistance and the responsible stewardship of public funds.<sup>45</sup> In particular, FEMA considered the extent to which increasing the threshold would reduce the administrative burden and resources spent by FEMA and recipients without statutory audit requirements, and how that reduction in administrative burden would result in expedited funding, facilitating quicker recovery. FEMA also considered past performance, specifically how the current threshold has failed to keep pace with the PA program's increased disaster spending. Regarding accountability measures, FEMA concluded that the reduced scrutiny accompanying an increased threshold would not pose a significant risk given FEMA's improvements to its cost estimating procedures.<sup>46</sup> Based on this analysis, FEMA determined that it should increase the threshold for simplified procedures to \$1,000,000. FEMA determined that projects below

the Fiscal Year (FY) 2021 CPI-adjusted threshold of \$132,800 represented only 76.8 percent of the total number of projects and 2.4 percent of total funding. Raising the threshold to \$1,000,000 achieves the same approximate percentage of total projects as Congress' original adoption of simplified procedures in 1988 at 95 percent.<sup>47</sup> Raising the threshold to \$1,000,000 accounts for a larger amount of small projects (from 76.8 to 94.4 percent) and an increase in the percentage of total funding (from 2.4 to 8.4 percent). This comports with Congress' original goal of maximizing the number of total projects eligible for simplified procedures while minimizing the amount of funding subject to the risks inherent to simplified final accounting. FEMA will continue to adjust annually for inflation based on the CPI-U.

This rule also adds a new paragraph "(c)(3)" in section 206.203 providing that the new threshold will apply to all Project Worksheets (PWs) for major disasters and emergencies declared on or after March 13, 2020, that have not been obligated as of the effective date of this rule.<sup>48</sup> For PWs from major disasters and emergencies declared before March 13, 2020, or that have already been obligated, the threshold will continue to be the amount previously published in the **Federal Register** for the applicable fiscal year.<sup>49</sup> As a result, this rule's applicability to unobligated future PWs will ensure FEMA and recipients can more efficiently process unobligated PWs for (for instance) COVID-19 declarations, which continue to fund important pandemic-related work, while avoiding unnecessary confusion and administrative burden by not affecting

previous project size determinations. FEMA notes that on March 1, 2022, the President directed FEMA to continue funding assistance for COVID-19 declarations at a 100 percent Federal share through July 1, 2022.

### 3. Regulatory Analysis

#### A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons the opportunity to submit comments. *See* 5 U.S.C. 553(b) and (c). The APA provides an exception to this prior notice and comment requirement for matters relating to public property, loans, grants, benefits, or contracts. 5 U.S.C. 553(a)(2). FEMA's PA program is a grant program through which FEMA obligates funding to State, local, Tribal, and territorial governments, as well as eligible PNP organizations, for debris removal, emergency protective measures, and the repair, replacement, or restoration of disaster-damaged facilities after a presidentially-declared major disaster. Because this rule relates to FEMA's obligation of grant funding under the PA program, it is exempt from notice and comment rulemaking under the APA.

FEMA acknowledges its general policy to provide for public participation in rulemaking unless it determines that circumstances warrant a departure from that general policy.<sup>50</sup> The circumstances presented here warrant such a departure. First, FEMA is still receiving and processing COVID-19 PWs and will continue to fund them at 100 percent Federal funding through at least July 1, 2022. Taking pre-promulgation comment on the rule would delay application of the new threshold and the more efficient processing of unobligated PWs for COVID-19 declarations, which continue to fund important pandemic-related work.

Second, the APA also provides an exception to prior notice and comment for rules of agency organization, procedure, or practice. 5 U.S.C. 553(b)(A). In addition to falling under the APA's exception to notice and comment for rules relating to grants, this final rule is also a procedural rule, promulgated for agency efficiency purposes, because it is limited to updating FEMA's internal procedures regarding the dollar figure at or below which FEMA will obligate funding based on an estimate of project costs, and above which FEMA will obligate

Emergency Management Agency To Respond to COVID-19," 86 FR 8281 (Feb. 5, 2021).

<sup>41</sup> Executive Order 13996, "Establishing the COVID-19 Pandemic Testing Board and Ensuring a Sustainable Public Health Workforce for COVID-19 and Other Biological Threats," 86 FR 7197 (Jan. 26, 2021).

<sup>42</sup> <https://www.fema.gov/blog/100-days-fema-and-our-partners-action> (last accessed May 4, 2021).

<sup>43</sup> FEMA's COVID-19 PA Obligations are \$33.5 billion as of November 8, 2021.

<sup>44</sup> Since 1980, for instance, the U.S. has sustained 291 climate-related disasters where damages reached or exceeded \$1 billion, with the total cost of these events alone exceeding \$1.900 trillion. National Oceanic and Atmospheric Administration, "Billion-Dollar Weather and Climate Disasters: Overview," available at <https://www.ncdc.noaa.gov/billions/> (last accessed Apr. 12, 2021).

<sup>45</sup> A copy of this analysis is on [regulations.gov](https://www.regulations.gov) under docket ID FEMA-2022-0020.

<sup>46</sup> *See infra*, note 20.

<sup>47</sup> In FEMA's 2014 report, it noted that projects under \$400,000 made up 98 percent of projects. Projects under \$1,000,000 now make up 95 percent of projects primarily due to extreme outlier projects. In 2014, FEMA had only had one \$1 billion project ever, while it has had eight projects over \$1 billion since 2017, two of which are in the ~\$10 billion range. These projects heavily skew the curve. The reason for the very large projects may be related to both the increase in very large disasters since 2014, and FEMA's current method of consolidating projects. Stafford Act section 428, "Public Assistance Program Alternative Procedures," was authorized by SRIA in 2013 and allows FEMA to combine multiple projects into one project. (The PA Program does not combine projects unless they are 428 projects; PA only combines sites when the project is not a 428 project). Following the introduction of section 428, FEMA has seen a notable uptick in project costs under the 428 consolidated designation.

<sup>48</sup> FEMA chose to limit the application of the new threshold based on the date of obligation, rather than the date of the disaster, because the date of obligation is the point at which FEMA and the recipient agree on the estimate.

<sup>49</sup> *See* <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>.

<sup>50</sup> 44 CFR 1.3(a) and (c).

funding based on actual project costs. When FEMA classifies a project as “small,” FEMA reviews the project to ensure the work is eligible, and FEMA forgoes the administrative burden of validating all costs with respect to the project. Not having to validate all costs would reduce documentation requirements for both FEMA and recipients. Additionally, small project classification allows recipients and FEMA to forgo quarterly report submission and review, respectively, as well as undergo an abbreviated closeout process that would not affect substantive rights. This action does not affect the substantive rights or obligations of PA recipients, including their eligibility to receive funding under the PA program. Instead, FEMA is updating the threshold in order to classify more projects as “small” to reduce burdens for both FEMA and the recipient.

Lastly, section 422(b) of the Stafford Act also contains a waiver of the APA, allowing FEMA to establish the threshold for eligibility “without regard to [5 U.S.C. chapter 5].” FEMA interprets 42 U.S.C. 5189(b)(2)’s APA waiver to apply to future updates to the threshold as a result of the three-year review that 5189(b)(3) requires. Specifically, subsection (b)(3) requires FEMA to “review the threshold for eligibility under this section” every three years. It is possible to read the phrase “under this section” as simply clarifying that the threshold to which the three-year review applies is the threshold authorized under 42 U.S.C. 5189 with no further meaning attributed to the words. However, this interpretation ignores the context and history of 42 U.S.C. 5189 and would mean that the direction from Congress is simply to review the threshold every three years with no indication of what Congress intended FEMA to do with the results of the three-year review.<sup>51</sup> Congress specifically directed FEMA in subsection (b)(2)(B) to adjust the threshold annually to reflect changes in the Consumer Price Index for all Urban Consumers published by the Department of Labor. It stands to reason that Congress would also provide direction to FEMA regarding adjustments to the base threshold as a result of the three-year review, and yet this interpretation would mean that

Congress did not provide such direction.

Legislative history suggests that Congress intended that FEMA maintain administrative efficiency in the PA program with an adjustable threshold.<sup>52</sup> The three-year review cycle coupled with an APA waiver creates such administrative efficiency. The phrase “threshold for eligibility” refers generally to the simplified procedure threshold and “under this section” refers to the review process established under the section. Under that review process, as established in subsection (b)(2), FEMA completes an analysis of the threshold, submits a report to Congress regarding the analysis, and then immediately establishes the new threshold without regard to the APA.

In so interpreting the statute, FEMA also relies on the fact that 42 U.S.C. 5189(b) is silent as to the expiration of the APA waiver. Generally, if Congress knows how to say something but chooses not to, its silence is controlling.<sup>53</sup> 42 U.S.C. 5189(b) contains no restrictions typically found in other APA waivers. There is an instructive example of a time-limited APA waiver within another section of the Stafford Act. 42 U.S.C. 5174, which governs the Individual Assistance program, generally requires FEMA to promulgate regulations to implement the program.<sup>54</sup> However, as amended by the Disaster Recovery Reform Act,<sup>55</sup> it states that FEMA may “waive notice and comment rulemaking” to carry out new authority for a state-managed housing program as a pilot program if FEMA determined that doing so was necessary for expeditious implementation.<sup>56</sup> This APA waiver for the state-managed housing program, however, was limited to two years and since FEMA did not publish final regulations within that time frame, the waiver authority and authority to conduct a pilot expired.<sup>57</sup> As with other APA waivers, Congress in 42 U.S.C. 5174 provided a definitive temporal limitation to its APA waiver (and specified a consequence associated with that limitation), whereas in 42 U.S.C. 5189 Congress provided none. This further supports the conclusion that Congress did not intend to limit the

APA waiver for establishing a simplified procedures threshold.

Further, the APA generally requires that substantive rules incorporate a 30-day delayed effective date. 5 U.S.C. 553(d). Because this rule is a procedural rule and is also otherwise exempt from the APA’s notice and comment requirement, FEMA finds that a delayed effective date is unnecessary.

*B. Executive Orders 12866, “Regulatory Planning and Review” and 13563, “Improving Regulation and Regulatory Review”*

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

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

#### i. Need for Regulation

In accordance with Executive Orders 12866, 13563, and Office of Management and Budget (OMB) Circular A–4, an agency must identify the problem that it intends to address through regulatory action. The action may be taken to address a statutory or judicial directive, significant market failure, or to meet some other compelling public need. This final rule responds to a statutory directive and will improve the functioning of government by changing the maximum threshold to a level that improves efficiency and reduces administrative costs. Because PA is a Federal program, regulation at the Federal level is appropriate.

Section 1107 of the Sandy Recovery Improvement Act of 2013 (SRIA)<sup>58</sup> amends section 422 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act<sup>59</sup> authorizing Simplified Procedures for the PA program under

<sup>52</sup> See H.R. REP. NO. 100–517 (1988), p. 11.

<sup>53</sup> *Animal Legal Defense Fund v. USDA*, 789 F.3d 1206 (11th Cir. 2015), citing *In re Haas*, 48 F.3d 1153, 1156 (11th Cir. 1995), abrogated on other grounds by *In re Griffith*, 206 F.3d 1389 (11th Cir. 2000).

<sup>54</sup> 42 U.S.C. 5174(j).

<sup>55</sup> Public Law 115–254, div. D, Oct. 5, 2018, 132 Stat. 3438.

<sup>56</sup> 42 U.S.C. 5174(f)(3)(j)(i).

<sup>57</sup> See 42 U.S.C. 5174(f)(3)(j)(ii)–(iii).

<sup>51</sup> “The words of the statute must be read in their context and with a view to their place in the overall statutory scheme . . . . A court must therefore interpret the statute as a symmetrical and coherent regulatory scheme, . . . and fit, if possible, all parts into an harmonious whole.” *FDA v. Brown & Williamson Tobacco*, 529 U.S. 120, 132–33 (2000).

<sup>58</sup> Public Law 113–2, section 1107, 127 Stat. 46.

<sup>59</sup> 42 U.S.C. 5189.

sections 403, 406, 407, and 502.<sup>60</sup> The objective of Simplified Procedures is to allow FEMA to quickly provide grant funding for recovery while lowering the administrative burden in cases where the benefit of uncovering fraud or waste is low. Every three years, after the initial implementation of the thresholds, the President, acting through the FEMA Administrator, shall review the threshold for Simplified Procedures under the Stafford Act.<sup>61</sup> Since the authority and direction are present in statute, updating the thresholds in line with the statutory requirement is both appropriate and necessary. Without this update, moreover, both FEMA and recipients will continue to not be able to fully realize the benefits of Simplified Procedures.

Since the adoption of Simplified Procedures, the maximum threshold has gradually shifted away from the initial policy benchmarks. Congress set the threshold at \$35,000 in 1988, which represented 95 percent of FEMA projects and 32 percent of PA disaster assistance funding.<sup>62</sup> Despite past adjustments to the maximum threshold and increases for inflation, small projects below the current threshold account for fewer than 76.8 percent of the total number of projects and 2.4 percent of funding due to the increasing frequency and magnitude of major weather and climate disasters.<sup>63</sup> From 1990–1999, FEMA obligated on average about \$2.7 billion in PA funding for disasters per year.<sup>65</sup> From 2000–2009, FEMA obligated on average about \$5.8 billion in PA funding for disasters per

year.<sup>66</sup> From 2010–2019, FEMA obligated on average about \$8.1 billion in PA funding for disasters per year.<sup>67</sup> Prior adjustments include yearly adjustments to the maximum threshold every fiscal year based on the CPI–U and a thorough review by the program every three years. FEMA is updating its regulations, as required by section 422(b), based on the findings of the 2020 review.

ii. Affected Population

The final rule will affect all potential applicants for Federal assistance under the PA program. Eligible applicants for PA include 56 State and territorial governments, 573 Federally recognized Indian Tribal governments, local governments, and certain PNP.

iii. Summary of Regulatory Changes

TABLE 1—SUMMARY OF CHANGES

Item	Current	Change	Impact
Maximum threshold for Simplified Procedures.	\$132,800 in FY 2021, adjusted every fiscal year using CPI–U.	\$1,000,000 for unobligated PWs processed on or after the effective date of the rule for major disasters and emergencies declared on or after March 13, 2020, adjusted every fiscal year using CPI–U.	<ul style="list-style-type: none"> <li>—The annual average benefit will be \$6,464,964. The total net 3-year benefit discounted at 3 percent and 7 percent, respectively, are 18,286,871 and \$16,966,108. The annualized benefit is \$6,464,964 and \$6,464,964 at the 3 and 7 percent discount rates, respectively.</li> <li>—The annual cost will be \$10,454 for just the first year. The total 3-year net cost discounted at 3 percent and 7 percent, respectively, are \$10,150 and \$9,770. The annualized cost is \$3,588 and \$3,723 at the 3 and 7 percent respective discount rates.</li> <li>—The total 3-year transfer payments from FEMA to the recipients discounted at 3 and 7 percent are \$40,803,651 and \$37,856,623, respectively. This estimated transfer is \$14,425,330 annualized.</li> </ul>

iv. Methodology

This economic analysis adheres to the guidelines in: Executive Order 12866, “Regulatory Planning and Review” and amendments; Executive Order 13563, “Improving Regulation and Regulatory Review;” and the Office of Management and Budget’s (OMB) Circular A–4 on Regulatory Analysis.

The methodology discussed below pertains to the Regulatory Impact Analysis (RIA) assessing the costs, benefits, and transfers associated with an increase of the PA small project

maximum threshold to \$1,000,000 for major disasters and emergencies declared on or after March 13, 2020, for unobligated projects.<sup>68</sup> The maximum threshold will be implemented to capture projects necessitated by the COVID–19 pandemic.

The analysis to determine the maximum threshold was completed prior to this RIA and reported in the 2020 Review. The 2020 Review evaluated multiple alternative maximum thresholds and the benefits and costs of each with regards to the PA

Program; a brief discussion of those alternatives is included in this document. This RIA aligns with the 2020 Review by evaluating the selected threshold by using data from the same databases to analyze the benefits, costs, and transfers in similar ways. The two analyses differ in their purposes, with this RIA focusing specifically on the \$1,000,000 threshold and its impacts for recipients, subrecipients, and FEMA. The two analyses also look at different periods. As explained further below, this analysis focuses on declaration

shown in 2020 dollars. Obligation of disaster funding can occur after the disaster year.

<sup>68</sup> For FY 2021, the maximum threshold for PA is \$132,800. While in 2020, it was \$131,100. The final rule will be implemented for major disasters and emergencies declared on or after March 13, 2020, for unobligated projects.

<sup>60</sup> 42 U.S.C. 5170b, 5172, 5173, 5192.

<sup>61</sup> 42 U.S.C. 5189(b)(3).

<sup>62</sup> See H.R. REP. NO. 100–517 (1988).

<sup>63</sup> National Oceanic & Atmospheric Administration (NOAA). (2021). *2020 U.S. billion-dollar weather and climate disasters in historical context*. Adam B. Smith. <https://www.climate.gov/news-features/blogs/beyond-data/2020-us-billion-dollar-weather-and-climate-disasters-historical>.

<sup>64</sup> U.S. Global Change Research Program (USGCRP). (2018). *Fourth National Climate Assessment, Chapter 2: Our Changing Climate*. <https://nca2018.globalchange.gov/chapter/2/>.

<sup>65</sup> Estimate based on data from FEMA’s EMMIE Enterprise Data Warehouse, as of Dec. 10, 2021.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* FEMA analyzed the data for obligated PA projects up to September 30, 2020. All amounts are

dates between August 25, 2017, through September 30, 2020.<sup>69</sup>

The primary data sources used for this analysis were PA data from Grants Manager (GM) and the Emergency Management Mission Integrated Environment (EMMIE). Data from GM provided several characteristics about the grants, including the number of projects and each project's cost. Data from EMMIE provided additional characteristics, including the obligation and deobligation amounts associated with each large project. FEMA formally adopted the National PA Delivery Model on August 25, 2017, and this is also when FEMA started collecting data using the GM database. Prior to the implementation of GM, EMMIE was the primary system of record for PA data. The GM database tracks the PA processes with more detail than EMMIE, including dates for all application and project process steps and tasks, as well as other attributes of the damages. The data from GM allows FEMA to perform analysis on project timeliness and accuracy using more detail. FEMA continues to also use EMMIE, which captures some data that GM does not, including obligation amounts. For this analysis, both GM and EMMIE data were needed and used. Therefore, the date that GM was adopted was selected as the beginning of the project data analyzed.<sup>70</sup> This analysis includes obligated project data for major disasters declared on or after August 25, 2017, through September 30, 2020. There are 1,132 days during this period. FEMA took the total number of days during the time of the analysis (1,132 days) and divided it by the number of days per year (365 days) to get the time span of data, 3.1 years (1,132 days ÷ 365 days). This provides a more accurate analysis of project thresholds within the context of the processes and procedures implemented as part of the National PA Delivery Model. It provides a better understanding of how potential adjustments to the threshold impact stakeholders based on the way that PA is currently implemented.

FEMA typically uses 10 years of historical data, analyzes it, then calculates a 10-year forward looking estimate for benefit, cost, and transfers. However, due to the data limitations discussed above, FEMA was only able to

obtain 3.1 years of historical data. For the purpose of this analysis, FEMA estimated the benefits, costs, and transfers for the next three years, since the Stafford Act requires FEMA to reevaluate the maximum threshold every three years.

FEMA obtained additional data to estimate wage rates from the Office of Personnel Management (OPM) and Bureau of Labor Statistics (BLS). All wage rate data is in year 2020 dollars. Burden hours associated with applying for and processing small and large projects were determined through FEMA internal assessments at the regional level where the average number of hours involved to close out small and large projects was calculated.

To estimate the impacts of this regulation, FEMA assessed the number of projects classified as small projects at the current threshold (no action baseline) and after the threshold is raised to \$1,000,000.

#### v. Assumptions

Project cost data in GM and obligation/deobligation data in EMMIE is reported in nominal dollars for their respective year. Due to the projects spanning multiple years from 2017 through 2020, the project cost data for each project was adjusted to year 2020 dollars using the CPI-U. Their status as either small or large was then assessed using the thresholds in 2020 dollars (\$132,800 and \$1,000,000).

This analysis calculated the Present Value (PV) of cost and transfer flows. PV calculations permit comparisons of cost and benefit streams that involve different time paths. FEMA used the following formula to calculate these flows:

$$\frac{1}{(1+r)^t}$$

where “*r*” is the discount rate, and “*t*” is the number of years in the future that the benefits or costs are expected to occur. Per OMB Circular A-4, FEMA used real discount rates of three percent and seven percent to discount benefits and costs measured in constant dollars. Unlike typical market interest rates, real rates exclude the expected rate of future price inflation. These figures estimate the value of future benefits and costs adjusted for differences in their timing.

#### vi. Baseline

Following guidance in OMB Circular A-4, FEMA assessed each impact of this rule against a no action baseline. A no action baseline is an assessment of the way the world would look absent this rule. For this analysis, the no action

baseline is a maximum threshold that remains at \$132,800, in 2020 dollars.

#### vii. Number of Projects and Total Dollars

To search for potential alternative thresholds, FEMA first analyzed the current situation if no changes were made to the maximum threshold for FY 2021 beyond the annual CPI-U adjustment. FEMA looked at the number of projects and total dollars by project amount since the adoption of the PA delivery model. Small projects, which are projects with total project costs below the \$132,800 threshold, made up 76.8 percent, or 47,376, of the total count of 61,710 projects. Large projects, which are projects with a total project cost at or above the threshold, accounted for 23.2 percent, or 14,334 of the total count of 61,710 projects. From August 25, 2017 through FY 2020 (3.1 years), the funding of small projects was \$1.6 billion (2.4 percent) and \$66.0 billion (97.6 percent) for large projects.

FEMA also looked at the number of projects and total dollars over the same time period had \$1,000,000 been the threshold. Small projects would have accounted for 94.4 percent, or 58,234, of the total count of 61,710 projects. Large projects would have accounted for 5.6 percent, or 3,476, of the total count of 61,710 projects. The funding of small projects would have been \$5.7 billion (8.4 percent) and \$62.0 billion (91.6 percent) for large projects. This would account for a difference of 10,858 projects classified as small under the \$1,000,000 threshold that were classified as large under the \$132,800 threshold (14,334 – 3,476).

#### viii. Cost

FEMA estimates that there will be a one-time familiarization cost of \$10,454 associated from changing the maximum threshold from \$132,800 to \$1,000,000 for unobligated future projects for major disasters and emergencies declared on or after March 13, 2020, as discussed later in this analysis. The total 3-year net cost rate discounted at 3 percent and 7 percent, respectively, are \$10,150 and \$9,770. The annualized cost is \$3,588 and \$3,723 at the 3 and 7 percent respective discount rates.

Small projects are subject to less scrutiny than large projects and by increasing the maximum threshold to \$1,000,000, a total of 10,858 more projects would have been classified as small projects that were classified as large projects under the current threshold of \$132,800.

Under the \$1,000,000 threshold, the small projects will be subject to less scrutiny compared to the no action

<sup>69</sup> The 2020 Review includes data with declaration dates from August 25, 2017 through November 8, 2021.

<sup>70</sup> For more information on the National PA Delivery Model, see the Public Assistance Delivery Model Fact Sheet published on August 17, 2018, available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_pa\\_delivery-model-factsheet.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_pa_delivery-model-factsheet.pdf) (last accessed Feb. 1, 2022).

baseline. This could potentially increase the risk of inaccurate reporting and decrease the ability for FEMA to identify and remedy noncompliance for these projects. This risk already exists for small projects, as recipients and subrecipients are only required to certify that they spent the money appropriately according to FEMA's policy. Conversely, recipients and subrecipients of large projects are required to fill out additional paperwork and provide proof to verify their spending.

When a recipient or subrecipient applies for PA funding, they would complete the phases of the Public Assistance delivery model.<sup>71</sup> These phases are 1. Operational planning, 2. Impacts and eligibility, 3. Scoping and costing, 4. Final review, 5. Obligation and recovery transition, 6. Post-award monitoring and amendments, and 7. Final reconciliation and closeout. FEMA does not perform a final inspection of completed small projects; however, the applicants must certify that the subapplicants completed the work in compliance with all applicable laws, regulations, and policies.<sup>72</sup> Noncompliance would occur if the recipient or subrecipient did not complete the work for a project that has been obligated by FEMA based on the Statement of Work (SOW). FEMA assumes that it is rare for noncompliance to occur since the applicants must certify the work and would be subject to penalties if they certify the completion of work when that information is inaccurate. For this reason, FEMA assumes that the cost to FEMA for noncompliance is minimal. Data is not available to estimate how common noncompliance occurs in small projects. FEMA acknowledges this risk exists, but is following the lead of Congress that believes that having a large dollar threshold for small projects creates a more streamlined approach that would "result in substantial savings of time and money that . . . should have a significant and beneficial impact on FEMA's overall program."<sup>73</sup>

<sup>71</sup> FEMA. How to Apply for Public Assistance. <https://www.fema.gov/assistance/public/apply#phases>. Last accessed on Dec. 1, 2021.

<sup>72</sup> See Stafford Act § 422 (42 U.S.C. 5189).

<sup>73</sup> See H.R. REP. NO. 100-517 (1988), p. 11; see also, e.g., OFFICE OF INSPECTOR GEN., ASSESSMENT OF FEMA'S PUBLIC ASSISTANCE PROGRAM POLICIES AND PROCEDURES (2009), available at [http://www.oig.dhs.gov/assets/Mgmt/OIG\\_10-26\\_Dec09.pdf](http://www.oig.dhs.gov/assets/Mgmt/OIG_10-26_Dec09.pdf) (recommended increasing the maximum threshold because of the administrative efficiency and streamlined process for all parties); U.S. GEN. ACCOUNTING OFFICE, DISASTER ASSISTANCE: IMPROVEMENTS NEEDED IN DETERMINING ELIGIBILITY FOR PUBLIC

A subrecipient may request additional funding through the PA appeals process, also known as the Net Small Project Overrun (NSPO) process, if the cost incurred for all of its small projects exceeds the total amount requested by the subrecipient for which FEMA has already obligated for those projects. Subrecipients do not have this option for large projects. Increasing the maximum threshold to \$1,000,000 would result in more small projects, which would mean that subrecipients would have more opportunities to apply for additional funds. Historically, only 0.05 percent of small projects have had first appeal NSPOs and 0.003 percent have had second appeal NSPOs.<sup>74</sup> Raising the maximum threshold to \$1,000,000 would lead to 10,858 more small projects over the 3.1 year period, and approximately 5.8 additional NSPOs (10,858 × (.05 percent in first appeal NSPOs + 0.003 percent in second appeal NSPOs)) over the time period, or fewer than 2 annually (5.8 additional NSPOs ÷ 3.1 years). These additional NSPOs would require time from subrecipients to apply and FEMA to process. FEMA cannot estimate the number of hours due to a lack of data available on time estimates for NSPOs.

#### Familiarization Costs for Recipients

The increase of the maximum threshold to \$1,000,000 for unobligated future project worksheets for major disasters and emergencies declared on or after March 13, 2020, will require time for the recipients to familiarize themselves with the changes made in this final rule. The total cost for familiarization would be \$10,454 for the first year. FEMA estimates recipients would spend one hour to familiarize themselves with this change. FEMA assumes a State Government Chief Executive, a senior level government official, or equivalent occupation, would read the existing and updated regulations to understand the changes.<sup>75</sup>

ASSISTANCE (1996), available at <http://www.gao.gov/assets/160/155459.pdf> (recommended increasing the minimum threshold to increase administrative efficiency); HOMELAND SEC. STUDIES AND ANALYSIS INST., ANALYSIS OF THE FEMA PUBLIC ASSISTANCE (PA) PROGRAM (2011), available at [http://assets.fiercemarkets.net/public/sites/govit/fema/foia\\_perera\\_bottomupreview.pdf](http://assets.fiercemarkets.net/public/sites/govit/fema/foia_perera_bottomupreview.pdf) (recommended increasing the minimum threshold to increase administrative efficiency).

<sup>74</sup> Out of 137,913 total obligated small projects since 2013, there were only 70 instances of first appeal NSPOs (0.05 percent). Out of 627,656 total obligated small projects since 1997, there were only 20 instances of second appeal NSPOs (0.003 percent).

<sup>75</sup> Estimates for time and wage rates were taken from the *Factors Considered When Evaluating a*

FEMA obtained the wage rate of \$58.34 for a State Government Chief Executive from BLS Occupational Employment Statistics (OES) data.<sup>76</sup> To account for employee benefits, the fully-loaded hourly mean wage rate for Chief Executives is \$93.34 (\$58.34 hourly mean wage for Chief Executives × 1.6 wage rate multiplier for State and local government workers).<sup>77</sup> FEMA used 56 States and territories in the estimate as this is the level from which a PA disaster declaration request is made. FEMA assumes there would be at least 112 (56 States and territories × 2) Chief Executives that review the changes, two from each State and territories. FEMA estimates it would cost \$10,454 for recipients to familiarize themselves with the changes (\$93.34 fully-loaded hourly mean wage rate × 1 hour × 112 Chief Executives). This will be a one-time cost for the recipients in the first year.

FEMA assumes the States and territories regularly update their emergency response networks and local emergency management divisions on changes in the field and the States and territories will disseminate the regulatory changes through each State's and territory's respective process. FEMA expects there to be no additional implementation costs.

#### Summary of Costs

There is an unquantifiable risk of an increase in noncompliance due to a lower level of oversight on small projects that are classified as large projects under the no action baseline.

FEMA estimates that the cost associated from changing the maximum threshold from \$132,800 to \$1,000,000 for unobligated projects for major disasters and emergencies declared on or after March 13, 2020, would be \$10,454. This cost is for familiarization of the \$1,000,000 maximum threshold for these unobligated projects.

*Governor's Request for Individual Assistance for a Major Disaster* Final Rule, 84 FR 10632, 10649 (Mar. 21, 2019).

<sup>76</sup> BLS OES, May 2020, State Government, Standard Occupational Code 11-1011 for Chief Executives, mean wage. <https://www.bls.gov/oes/2020/may/oes111011.htm>. Last accessed on July 16, 2021.

<sup>77</sup> Bureau of Labor Statistics. Employer Costs for Employee Compensation, Table 1. "Employer costs per employee compensation March 2020. Retrieved from [https://www.bls.gov/news.release/archives/ecec\\_06182020.pdf](https://www.bls.gov/news.release/archives/ecec_06182020.pdf). Accessed on October 19, 2021. The wage multiplier is calculated by dividing total compensation for State and local government workers of \$52.45 by Wages and salaries for State and local government workers of \$32.62 per hour yielding a benefits multiplier of approximately 1.6.



The following calculations are estimates of costs for three years in the future. The annual cost will be \$10,454 for only the first year. The average cost

will be \$3,485 (\$10,454 ÷ 3) each year. The discounted total net 3-year cost rate at 3 percent and 7 percent, respectively, are \$10,150 and \$9,770. The annualized

cost is \$3,588 and \$3,723 at the 3 and 7 percent discount rates. (See Table 2).

TABLE 2—ESTIMATED COST OVER A 3-YEAR PERIOD  
[2020\$]

Year	Total cost	Annual cost discounted at 3%	Annual cost discounted at 7%
1 .....	\$10,454	\$10,150	\$9,770
2 .....	0	0	0
3 .....	0	0	0
<b>Total</b> .....	<b>10,454</b>	<b>10,150</b>	<b>9,770</b>
<b>Annualized</b> .....		<b>3,588</b>	<b>3,723</b>

ix. Benefits

FEMA identifies both qualitative and quantitative benefits to support increasing the maximum threshold. Raising the maximum threshold to \$1,000,000 will reduce the administrative burden and improve program efficiency for recipients, subrecipients, and FEMA. FEMA considers these cost savings to be benefits.

FEMA requires subrecipients to restrict each PW to a conceptual and logical grouping of eligible work at one or more sites to minimize the number of PWs necessary to provide assistance for each subrecipient.<sup>78</sup> Some subrecipients currently try to avoid including too many sites on a single PW in order to stay below the maximum threshold. Increasing the maximum threshold will remove the need to adjust PWs in this way for projects near the current threshold, and lead to a higher total dollar amount per PW and a smaller number of PWs with more logically

grouped work. Since small projects are generally less administratively burdensome for FEMA, recipients, and subrecipients, this rule will increase administrative efficiencies because it decreases the time it takes for staff to manage and review grants.

Cost Savings to FEMA

Processing a small project takes less time for FEMA to process than a large project. If the maximum threshold was \$1,000,000, it would have resulted in a \$13,246,760 administrative cost savings for FEMA, over a 3.1-year period.

The amount of time that FEMA spends to close out a project varies depending on whether it is classified as a large or small project. Based on State and FEMA regional offices' input to a National Emergency Management Association (NEMA) report, on average, each large project takes 24.8 hours and each small project takes 4.9 hours to close out, a difference of 19.9 hours (24.8 hours – 4.9 hours) per project.<sup>79</sup> The average amount of time FEMA

spends to close out a large project is not dependent upon the dollar amount associated with the project. FEMA used the average hourly wage of \$41.99 ((\$34.76 GS 11 Step 5 + \$41.66 GS 12 Step 5 + \$49.54 GS 13 Step 5) ÷ 3) based on OPM's locality pay area of rest of U.S. for 2020.<sup>80</sup> FEMA calculated the fully loaded hourly wage by multiplying the average hourly wage by 1.46 for civilian workers, resulting in \$61.31 (\$41.99 × 1.46) per hour.<sup>81</sup> FEMA multiplied the time for large and small projects by the fully loaded hourly wage, resulting in \$1,520.49 (\$61.31 × 24.8 hours) for the closing cost for large projects and \$300.42 (\$61.31 × 4.9 hours) for the closing cost for small projects. This results in the administrative efficiencies between large and small projects, with a difference of –\$1,220.07 (\$300.42 – \$1,520.49). FEMA estimates that, on average, it saves the agency \$1,220 per PW to process a small project over a large project. (See Table 3).

TABLE 3—ESTIMATED TOTAL ADMINISTRATIVE COST TO FEMA

	Large project	Small project
Average amount of time it takes FEMA to close out each project .....	24.8 hours .....	4.8 hours.
FEMA employee fully-loaded wage rate .....	\$61.31 .....	\$61.31.
Total Admin Cost for FEMA for each project .....	\$1,520 .....	\$300.

Small projects have fewer requirements for final reconciliation and close out time compared to large

projects. By increasing the maximum threshold, FEMA expects more projects to be classified as small, therefore

reducing the time spent on completing supplemental forms. If the maximum threshold would have been \$1,000,000,

<sup>78</sup> See 44 CFR 206.201(k); FEMA Policy 104–009–2, *Public Assistance Program and Policy Guide*, v.4, pp. 60–63 (June 1, 2020), available at [https://www.fema.gov/sites/default/files/documents/fema\\_pappg-v4-updated-links\\_policy\\_6-1-2020.pdf](https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf).

<sup>79</sup> “Determination on the Public Assistance Simplified Procedures Thresholds: Fiscal Year 2014 Report to Congress, Analysis Report for Sandy Recovery Improvement Act of 2013” (Jan. 29, 2014),

page 26. Available at <https://www.regulations.gov/document/FEMA-2014-0009-0002>.

<sup>80</sup> Pay & Leave: Salaries & Wages for locality pay area of rest of U.S. OPM. Available at [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/20Tables/html/RUS\\_h.aspx](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/20Tables/html/RUS_h.aspx). Last accessed: May 6, 2021.

<sup>81</sup> Bureau of Labor Statistics, *Employer Costs for Employee Compensation*, Table 1. “Employer costs

for employee compensation: March 2020.” Available at [https://www.bls.gov/news.release/archives/ecec\\_06182020.pdf](https://www.bls.gov/news.release/archives/ecec_06182020.pdf). Accessed November 2, 2021. The wage multiplier is calculated by dividing total compensation for civilian workers of \$37.73 by Wages and salaries for civilian workers of \$25.91 per hour yielding a benefits multiplier of approximately 1.46.

there would have been 10,858 projects classified as small that are currently classified as large.<sup>82</sup> Increasing the maximum threshold to \$1,000,000 will increase the number of small projects so that it accounts for 94.4 percent of FEMA PA projects. This will align with the original threshold Congress set in 1988, where the number of small projects represented 95 percent of FEMA PA projects. The estimated cost savings to FEMA is \$13,246,760 ( $\$1,220 \times 10,858$ ) for 3.1 years. (See Table 4).

TABLE 4—ESTIMATED TOTAL COST SAVINGS TO FEMA OVER 3.1 YEARS [2020\$]

	\$132,800 Threshold	\$1M Threshold
Number of Small Projects at Each Threshold .....	47,376	58,234
Difference in the Number of Small Projects from the Current Threshold .....	.....	10,858
Cost savings from Processing Each Small Project instead of a Large Project .....	.....	\$1,220
Estimated Total Cost Savings to FEMA <sup>83</sup> .....	\$0	\$13,246,760

Cost Savings to Recipients and Subrecipients

Processing a small project takes less time for recipients and subrecipients compared to a large project because small projects require fewer forms. If the maximum threshold were \$1,000,000, it would have resulted in a \$1,285,474 cost savings for recipients and subrecipients over the 3.1-year period.

To estimate cost savings, FEMA used BLS data for average hourly wage rates for Emergency Management Directors for State Governments, \$34.97.<sup>84</sup> To account for benefits, FEMA multiplied the wage rate by 1.6 for State and local government workers to obtain a fully loaded hourly wage of \$55.95 ( $\$34.97 \times 1.6$ ). FEMA requires six supplemental forms for large projects that are not required for small projects.<sup>85</sup> <sup>86</sup> Based on FEMA regional input, recipients with projects over the maximum threshold must fill out (1) FEMA Form 009–0–123: Force Account Labor Summary Record, (2) FEMA Form 009–0–124: Materials Summary Record, (3) FEMA Form 009–0–125: Rented Equipment Summary Record, (4) FEMA Form 009–0–126: Contract Work Summary Record, (5) FEMA Form 009–0–127: Force Account Equipment Summary Record, and (6) FEMA Form 009–0–111: Quarterly Progress Report.

The recipient or subrecipient must submit FEMA Forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127 for each large project undertaken. These five forms take a combined total of 2 hours for each recipient or subrecipient to complete.<sup>87</sup> Additionally, each recipient must submit FEMA Form 009–0–111 once quarterly when it has at least one large ongoing project. This form would include all large projects for that recipient. The form takes 100 hours to fill out.

To estimate the cost savings for FEMA Forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127, FEMA multiplied the total time required to complete these forms by the fully-loaded wage rate for State and local government Emergency Management Directors. Recipients and subrecipients would have a cost savings of \$111.90 (2 hours  $\times$  \$55.95) per project for recipients and subrecipients to process a small project over a large project. FEMA then multiplied the \$112 cost savings per project by the 10,858 large projects that would have been a small projects if the maximum threshold were \$1,000,000. FEMA estimated a total cost savings of \$1,216,096 ( $\$112 \times 10,858$ ) for recipients and subrecipients over the 3.1-year period for forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and

009–0–127. (See Table 5). Annually, FEMA estimated the cost savings to be \$392,289 ( $\$1,216,096 \div 3.1$  years).

To estimate the cost savings for recipients for FEMA Form 009–0–111, FEMA multiplied the time required to complete this quarterly form by the fully-loaded wage rate for State and Local government Emergency Management Directors. Recipients would have a cost savings of \$5,595 ( $\$55.95 \times 100$  hours) per quarter. FEMA then analyzed the data to determine then number of recipients who would not have at least one ongoing large project if the maximum threshold were \$1,000,000 compared to those who would at the \$132,800 threshold. FEMA assumed all recipients with at least one ongoing project submitted FEMA Form 009–0–111 each quarter for the duration of the 3.1-year period and the recipient without an ongoing large project did not submit this form. Over the 3.1-year period, the number of recipients with at least 1 ongoing project would reduce by 1, from 56 to 55.<sup>88</sup> Annually, this cost savings for recipients equates to \$22,380 ( $\$5,595 \times 4$  quarters) and \$69,378 over the 3.1-year period ( $\$22,380 \times 3.1$  year).

Annually, increasing the maximum threshold from \$132,800 to \$1,000,000 would have a total cost savings for recipients and subrecipients of \$414,669 ( $\$392,289 + \$22,380$ ).

<sup>82</sup> 58,234 small projects would exist at the \$1,000,000 threshold and 47,376 small projects at the actual threshold. The difference in the number of small projects is  $58,234 - 47,376 = 10,858$ .

<sup>83</sup> Estimated savings is calculated by taking the number of small projects at each threshold and then multiplying it by the increase in small projects from the current threshold.  $\$1,220 \times 10,858 = \$13,246,760$ .

<sup>84</sup> According to the U.S. Department of Labor, Bureau of Labor Statistics, the May 2020 Occupational Employment and Wage Estimates hourly mean wage rate for Emergency Management Directors (Standard Occupational Classification 11–

9161) for State Government employees is \$34.97. <https://www.bls.gov/oes/2020/may/oes119161.htm>, accessed November 23, 2021.

<sup>85</sup> Public Assistance Program, Paperwork Reduction Act Information Collection Supporting Statement, OMB Control Number: 1660–0017, available at: [www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201304-1660-001](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201304-1660-001), see Supporting Statement A.

<sup>86</sup> Recipients or subrecipients with small projects may fill out some of these five forms after the work is complete if they are submitting paperwork to request for funds for the actual cost(s).

<sup>87</sup> Public Assistance Program, Paperwork Reduction Act Information Collection Supporting Statement, OMB Control Number: 1660–0017, available at: [www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201304-1660-001](http://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201304-1660-001), see Supporting Statement A. According to the Paperwork Reduction Act Information Collection Supporting Statement, FEMA Form 009–0–123 takes 0.5 hours, 009–0–124 takes 0.25 hours, 009–0–125 takes 0.5 hours, 009–0–126 takes 0.5 hours, and 009–0–127 takes 0.25 hours to complete.

<sup>88</sup> The recipient was the State of Wyoming and the project cost was \$142,489.

TABLE 5—ESTIMATED TOTAL COST SAVINGS TO RECIPIENTS AND SUBRECIPIENTS OVER 3.1 YEARS  
[2020\$]

	\$132,800 Threshold	\$1M Threshold
<b>FEMA Forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127</b>		
Number of Large Projects at Each Threshold .....	14,334	3,476
Decrease in the Number of Large Projects from the Current Threshold .....	0	10,858
Cost of Processing Each Large Project <sup>89</sup> .....		\$112
Estimated Cost Savings for the Five Forms <sup>90</sup> .....	\$0	\$1,216,096
<b>FEMA Form 009–0–111</b>		
Number of Recipients with Ongoing Large Projects .....	56	55
Decrease in the Number of Recipients from the Current Threshold .....	0	1
Cost savings from Submitting Fewer Forms .....	\$0	\$69,378
Estimated Cost Savings for FEMA Form 009–0–111 <sup>91</sup> .....	\$0	\$69,378
Estimated Total Cost Savings to Recipients and Subrecipients over 3.1 Years <sup>92</sup> .....	\$0	\$1,285,474

Total Benefits at the \$1M Threshold

TABLE 6—TOTAL BENEFITS AT THE \$1M THRESHOLD OVER 3.1 YEARS  
[2020\$]

	\$1M Threshold
<b>Administrative cost savings to FEMA</b>	
Decrease in the number of large projects PWs .....	10,858
Cost Savings from Processing Each Small Project over a Large Project .....	\$1,220
Estimated Total Cost savings to FEMA <sup>93</sup> .....	\$13,246,760
<b>Administrative Cost Savings to Recipient and Subrecipient</b>	
<b>FEMA Forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127</b>	
Decrease in the number of large projects from the Current Threshold .....	10,858
Dollars per PW to recipients/subrecipients (reduction in forms) .....	\$112
Estimated Cost Savings for the Five Forms .....	\$1,216,096
<b>FEMA Form 009–0–111</b>	
Decrease in the Number of Recipients from the Current Threshold .....	1
Cost savings from Submitting Fewer Forms .....	\$69,378
Estimated Cost Savings for FEMA Form 009–0–111 .....	\$69,378
Estimated Total Cost Savings to Recipients and Subrecipients .....	\$1,285,474
Total Administrative Cost Savings <sup>94</sup> .....	\$14,532,234

Project Consolidations

A recipient may decide to consolidate its grant requests by combining eligible work at one or more sites on a single PW. Subrecipients have some discretion in how they group eligible work across PWs, and some currently try to avoid including too much on a single PW in order to stay below the maximum threshold. They instead spread the work across multiple PWs below the threshold. With a \$1,000,000 threshold,

projects under this threshold will be considered small, giving recipients and subrecipients greater flexibility in how they use the funds they receive. With small projects, recipients and subrecipients can retain any excess funds (as opposed to FEMA deobligating these funds) and can use them to reduce risk and improve future disaster operations. If a recipient or subrecipient were to exceed the threshold, it would potentially serve as a deterrent to fully consolidating eligible work on PWs, as

the benefits of Simplified Procedures would then be lost. Raising the maximum threshold to \$1,000,000 removes the disincentive for consolidating eligible work on PWs with a total cost under that amount. This reduces the total number of PWs to be processed, thereby increasing the administrative efficiency for recipients, subrecipients, and FEMA. Since there is no accurate way for FEMA to determine how much eligible work could potentially be consolidated on fewer

<sup>89</sup> For forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127.

<sup>90</sup> Estimated cost savings for the five forms = Decrease in the number of large projects from the current threshold × cost of processing each large project. 10,858 × \$112 = \$1,216,096.

<sup>91</sup> Estimated cost savings for FEMA Form 009–0–111 = Decrease in the number of recipients from the current threshold × cost savings from submitting fewer forms. 1 × \$69,378 = \$69,378.

<sup>92</sup> Estimated total cost savings to recipients and subrecipients = Estimated cost savings for the five

forms + estimated total cost savings for FEMA Form 009–0–111. \$1,216,096 + \$69,378 = \$1,285,474.

<sup>93</sup> Estimated total cost savings to FEMA = Decrease in the number of large projects PWs × Cost Savings from processing each small project over a large project. 10,858 × \$1,220 = \$13,246,760.

<sup>94</sup> \$13,246,760 + \$1,285,474 = \$14,532,234.

PWs, FEMA is not able to determine the exact number of small project PWs that will now no longer be submitted under the increased threshold. However, with a current average of 15,283 small projects annually and up to an additional 10,858 projects that will now be small projects, FEMA assumes additional consolidation will occur.<sup>95</sup>

**Implementation Cost Savings for Applicable Unobligated PWs**

FEMA will implement the \$1,000,000 maximum threshold for major disasters and emergencies declared on or after March 13, 2020, for projects that have not been obligated as of the effective date of this rule. FEMA conducted the same analysis as above in the cost savings to FEMA and cost savings to recipients and subrecipients, but looked only at the projects that were unobligated at the time that FEMA pulled the data from data management systems.<sup>96</sup> FEMA adjusted the project

cost data for these projects to year 2020 dollars using the CPI-U and their status as either small or large assessed using the thresholds in 2020 dollars (\$132,800 and \$1,000,000). This implementation will be applicable for current unobligated projects with a declaration date between March 13, 2020 to September 30, 2020.<sup>97</sup> FEMA identified projects in the database with a declaration date between March 13, 2020 to September 30, 2020 then focused on those projects that were currently unobligated. Then FEMA conducted two analyses: one looking at the number of unobligated small projects at \$132,800 threshold, and the other looking at the number of unobligated small projects at the \$1,000,000 threshold. FEMA then compared the differences in these numbers at the two thresholds. At the \$132,800 threshold, there were 5,579 unobligated small projects. At the

\$1,000,000 threshold, there would be 9,715 unobligated small projects. FEMA estimates 4,136 (9,715 – 5,579) out of the 10,877 total unobligated projects will be classified as small that were formerly classified as large when the maximum threshold is adjusted to \$1,000,000 for unobligated projects going back to March 13, 2020.

This will result in cost savings to FEMA of \$5,045,920 ( $\$1,220 \times 4,136$ ) and cost savings to recipients and subrecipients of \$463,232 ( $\$112 \times 4,136$ ) from FEMA Forms 009-0-123, 009-0-124, 009-0-125, 009-0-126, and 009-0-127. (See Table 7). The number of recipients filling out FEMA Form 009-0-111 will not be impacted because the number of recipients with large projects is not impacted when including the unobligated projects. This implementation will have a total cost savings of \$5,509,152 ( $\$5,045,920 + \$463,232$ ).

**TABLE 7—ESTIMATED TOTAL COST SAVINGS FOR UNOBLIGATED PROJECTS WITH A DECLARATION DATE ON OR AFTER MARCH 13, 2020**

	\$132,800 Threshold	\$1M Threshold
Number of Unobligated Small Projects at Each Threshold .....	5,579	9,715
Difference in the Number of Unobligated Small Projects from FY 2020 Threshold .....	.....	4,136
Cost savings from Processing Each Unobligated Small Project instead of a Large Project for FEMA .....	.....	\$1,220
Estimated Total Cost Savings to FEMA <sup>98</sup> .....	\$0	\$5,045,920
Cost savings from Processing Each Unobligated Small Project instead of a Large Project for Recipients and Subrecipients for FEMA Forms 009-0-123, 009-0-124, 009-0-125, 009-0-126, and 009-0-127 .....	0	\$112
Estimated Total Cost Savings to Recipients and Subrecipients <sup>99</sup> .....	\$0	\$463,232
<b>Total Cost Savings</b> .....	<b>\$0</b>	<b>\$5,509,152</b>

**Summary of Benefits Over a 3-Year Period**

Based on historical data, FEMA estimates that the total benefit from changing the maximum threshold from \$132,800 to \$1,000,000 will be \$20,041,386 ( $\$14,532,234 + \$5,509,152$ ) over the period analyzed. These benefits

are calculated from the 3.1 years of historical data from GM.<sup>100</sup>

The following calculations are estimates of benefits for three years in the future based on the previous section's benefits estimates. These figures include three-year total and discounted annualized figures. FEMA adjusts the 3.1-year period to 3 years to arrive at the total undiscounted

estimated benefit for three years of \$19,394,890.<sup>101</sup>

The average annual benefit will be \$6,464,964. The discounted total net 3-year benefit rate at 3 percent and 7 percent, respectively, are \$18,286,871 and \$16,966,108. The annualized benefit is \$6,464,964 at both the 3 and 7 percent discount rates. (See Table 8).

<sup>95</sup>The data include 47,376 small projects between August 25, 2017 through September 30, 2020, or 3.1 years.  $47,376 \div 3.1 = 15,283$ .

<sup>96</sup>FEMA pulled the data on April 6, 2021, from EMMIE and GM.

<sup>97</sup>September 30, 2020 is the last date of FY 2020 and the last date used for this RIA analysis. Obligation of disaster funding can occur after the disaster year.

<sup>98</sup>Estimated savings is calculated by taking the number of small projects at each threshold and then multiplying it by the increase in small projects from the FY 2020 threshold.  $\$1,220 \times 4,136 = \$5,045,920$ .

<sup>99</sup>Estimated savings is calculated by taking the number of small projects at each threshold and then multiplying it by the increase in small projects from the FY 2020 threshold.  $\$112 \times 4,136 = \$463,232$ .

<sup>100</sup>GM began on August 25, 2017. FEMA used data from August 25, 2017 to September 30, 2020

for this analysis. There are 1,132 days during this period. FEMA took the total number of days during the time of the analysis and divided it by the average of number of days per year.  $1,132 \div 365 = 3.1$ .

<sup>101</sup>The total benefit amount over 3.1 years was \$20,041,386. To adjust this figure for only 3 years, it was divided by 3.1 and then multiplied by 3.  $(\$20,041,386 \div 3.1) \times 3 = \$19,394,890$ .

TABLE 8—ESTIMATED BENEFIT OVER A 3-YEAR PERIOD  
[2020\$]

Year	Total benefits	Annual benefits discounted at 3%	Annual benefits discounted at 7%
1 .....	\$6,464,964	\$6,276,664	\$6,042,022
2 .....	6,464,964	6,093,849	5,646,750
3 .....	6,464,964	5,916,358	5,277,336
Total .....	.....	18,286,871	16,966,108
Annualized .....	.....	6,464,964	6,464,964

## x. Transfers

Transfer payments are monetary payments from one group to another that do not affect total resources available to society. Transfers such as Federal grants, insurance payments, direct subsidies, and indirect subsidies (e.g., cross-subsidies) can have significant efficiency effects in addition to distributional effects and are not included in the estimates of the benefits or costs of a regulation. The transfers associated with this final rule are the amount that is from a reduction in deobligations of excess project funds.

## Deobligation

When the cost estimates exceed actual costs for small projects, FEMA does not deobligate those funds from the recipients or subrecipients; it is only for large projects where excess funds are deobligated. For projects which become categorized as small under the increased threshold, FEMA will no longer deobligate those excess funds and the funds will remain with the recipients and subrecipients. By allowing recipients and subrecipients to keep these excess funds, the funds are still

providing a benefit to the public since the funds are available given to recipients (State, local, Tribal, and territorial governments). FEMA does not place any requirements on how the excess funds are spent. FEMA cannot quantify the exact benefit to the public for these specific funds and recognizes that either efficiency gains or losses could occur once acquired by the recipients and subrecipients. These excess funds are a considered a transfer payment from FEMA to recipients and therefore would not affect the total resources available to society.

FEMA analyzed the deobligation amounts for large projects, adjusted to year 2020 dollars, and compared them using the current threshold of \$132,800 and the increased threshold of \$1,000,000.<sup>102</sup> Projects where the total obligated amount was deobligated were excluded from the analysis, as total deobligation indicates that the project was not conducted at all and the funds would not have been awarded regardless of project size. For large projects, those above the current threshold of \$132,800, a total of \$543,871,441 has been deobligated in

the 3.1 years of projects analyzed. Using a threshold of \$1,000,000, \$499,152,919 would still have been deobligated over the same period, or a difference of \$44,718,521 (8.2 percent) less. This difference accounts for 0.07 percent ( $\$44,718,521 \div \$67,659,994,342$ ) of all PA costs during the same period. When the maximum threshold is changed from \$132,800 to \$1,000,000, the amount of deobligations decreases by \$14,425,329 ( $\$44,718,521 \div 3.1$  years) per year amongst all 56 states and territories, or \$257,595 ( $\$14,425,329 \div 56$ ) in average deobligations per State or territory per year.

Table 10 below shows the deobligated values and the amount that was deobligated for large projects at the \$132,800 threshold compared to the amount that would have been deobligated for large projects using a \$1,000,000 threshold. The resulting difference is the amount of deobligations that would not have been recouped by FEMA for projects considered large at the \$132,800 threshold but small at a \$1,000,000 threshold over the period analyzed.

TABLE 9—DEOBLIGATIONS AT EACH THRESHOLD OVER 3.1 YEARS  
[2020\$]

	\$132,800 Threshold	\$1M Threshold
Deobligation Amount .....	\$543,871,441	\$499,152,919
Difference From \$132,800 Threshold .....	0	-\$44,718,521

<sup>102</sup> Obligation and deobligation amounts for projects are available in the Emmie database. The dollar amounts were adjusted for inflation to year 2020 dollars to be accurately compared against the \$132,800 and \$1M thresholds, which are year 2020 dollars.

Estimated Transfers Over a 3-Year Period

The figures in the previous section are estimates of 3.1 years of historical deobligations compared at the two thresholds.<sup>103</sup> The following calculations are estimates of transfers for three years in the future based on the deobligation estimates found in the previous section. These figures include three-year total and discounted annualized figures. The total undiscounted estimated transfers for three years is \$43,275,988.<sup>104</sup> The average annual undiscounted transfers from FEMA to recipients and subrecipients is \$14,425,329.<sup>105</sup> The discounted total net 3-year transfer rate at 3 and 7 percent, respectively, are \$40,803,651 and \$37,856,623. Annualized transfers are \$14,425,330 and \$14,425,329, respectively.

TABLE 10—ESTIMATED TRANSFERS OVER A 3-YEAR PERIOD [2020\$]

Year	Transfers from FEMA to recipient	Total transfers	Annual transfers discounted at 3%	Annual transfers discounted at 7%
1	\$14,425,329	\$14,425,329	\$14,005,174	\$13,481,616
2	14,425,329	14,425,329	13,597,257	12,599,641
3	14,425,329	14,425,329	13,201,220	11,775,366
Total <sup>106</sup>	43,275,988	43,275,988	40,803,651	37,856,623
Annualized			14,425,330	14,425,329

xi. Impacts

FEMA will increase the large project maximum threshold pursuant to the SRIA. The subject of this RIA is an increase from the current maximum threshold for Simplified Procedures to \$1,000,000 for major disasters and emergencies declared on or after March 13, 2020, for unobligated projects. This will impact current unobligated projects. It will then continue to be adjusted each fiscal year for inflation using the CPI-U and reevaluated again three years after implementation.<sup>107</sup>

Despite past adjustments to the maximum threshold, it has gradually shifted away from the initial policy benchmarks. Congress set the threshold at \$35,000 in 1988, which represented 95 percent of FEMA projects and 32 percent of PA disaster assistance funding. Prior adjustments include yearly adjustments to the maximum threshold every fiscal year based on the CPI-U and a thorough review by the

program every three years. With the \$132,800 threshold in place, small projects account for 77 percent of all projects and 2.4 percent of funding due to the increasing frequency and magnitude of major disasters due to the increase in the number of weather and climate disasters. Those involved with the PA process are impacted by this rule, including State, local, Tribal, and territorial governments, and certain private non-profit organizations.

Raising the maximum threshold for Simplified Procedures to \$1,000,000, thereby increasing the number of small projects, will help speed closure of both projects and funding for disaster recovery, which will decrease the administrative burden of a disaster, help speed disaster recovery, and reduce the associated length of ongoing government oversight and associated costs. FEMA estimates the average annual benefit of this rule will be \$6,464,964. The discounted total 3-year

benefit at 3 percent and 7 percent discount rates, respectively, are \$18,286,871 and \$16,966,108. The annualized benefit is \$6,464,964 and \$6,464,964 at both the 3 and 7 percent discount rates.

There will be a cost of \$10,454 for the first year for recipients to familiarize themselves with the changes. The total 3-year total cost discounted at 3 percent and 7 percent, respectively, are \$10,150 and \$9,770. The annualized cost is \$3,588 and \$3,723 at the 3 and 7 percent respective discount rates.

Increasing the maximum threshold leads to FEMA failing to recoup some over-obligated funds. These funds instead remain with grant recipients, which are State, local, Tribal or territorial governments, and certain private non-profit organizations. This estimated transfer from FEMA to the recipients and subrecipients is \$14,425,330 annualized.

Category	3% Discount rate	7% Discount rate	Source citation (RIA, preamble, etc.)
Benefits:			
Annualized Monetized benefits	\$6,464,964	\$6,464,964	RIA.
Annualized quantified, but unmonetized benefits	N/A	N/A	N/A.
Qualitative (unquantified) benefits			N/A.
Costs:			
Annualized monetized costs	\$3,588	\$3,723	RIA.
Annualized quantified, but unmonetized, costs	N/A	N/A	N/A.

<sup>103</sup> GM began on August 25, 2017. FEMA used data from August 25, 2017 to September 30, 2020 for this analysis. There are 1,132 days during this time period. FEMA took the total number of days during the time of the analysis and divided it by the average of number of days per year.  $1,132 \div 365 = 3.1$ .

<sup>104</sup> The total deobligation amount over 3.1 years was \$44,718,521. To adjust this figure for only 3 years, it was first divided by 3.1 and then multiplied by 3.  $((\$44,718,521 \div 3.1) \times 3) = \$43,275,988$ .

<sup>105</sup>  $\$43,275,988 \div 3 = \$14,425,329$ .

<sup>106</sup> Figures may not total due to rounding.

<sup>107</sup> FEMA publishes the annual adjustments to the maximum threshold on its website. See <https://www.fema.gov/assistance/public/applicants/per-capita-impact-indicator>.

Category	3% Discount rate	7% Discount rate	Source citation (RIA, preamble, etc.)
Qualitative (unquantified) costs .....	Projects which would fall below the maximum threshold once the regulation goes into effect would be subjected to less scrutiny, which could potentially increase the risk of inaccurate reporting and decrease the ability for FEMA to identify and remedy noncompliance. While this risk exists, it is unclear how common noncompliance would be among these projects		RIA.
Transfers:			
Annualized monetized transfers: "on-budget" .....	\$14,425,330	\$14,425,329	RIA.
from whom to whom? .....	From FEMA to grant recipients		
Annualized monetized transfers: "off-budget" .....	N/A	N/A	N/A.
from whom to whom? .....	N/A		N/A.
Category	Effects		Source Citation (RIA, preamble, etc.)
Effects on State, local, and/or tribal governments .....	Eligible applicants for PA include 56 State and territorial governments and 573 Federally recognized Indian Tribal governments, as well as local governments, and certain private non-profits (PNPs). Eligible applicants with projects below the \$1M threshold would not incur the costs associated with large projects		RIA.
Effects on small businesses .....	Small PNPs that are eligible for PA funds, will be able to access funding at a lower administrative cost if it is under the maximum threshold		N/A.
Effects on wages .....	None		None.
Effects on growth .....	None		None.

xii. Uncertainty Analysis

The findings, results, and conclusions of this analysis could change if the assumptions used in the primary analysis were to change. FEMA cannot accurately forecast disasters due to their unpredictability, including how many disasters will occur or the magnitude of future disasters. Therefore, the estimates of this analysis are sensitive to future disaster declarations, which are uncertain.

High-cost climate disasters have been growing in frequency over the last few decades. From 1980–1989, there were 29 disasters and the average annual cost of damages was \$17.8B. From 1990–1999, there were 53 disasters and the average annual cost of damages was \$27.4B, with FEMA obligating on average about \$2.7 billion in PA funding for these disasters per year. From 2000–2009, there were 62 disasters and the average annual cost of damages was \$51.9B, with FEMA obligating on

average about \$5.8 billion in PA funding for these disasters per year. From 2010–2019, there were 119 disasters and the average annual cost of damages was \$81.10B, with FEMA obligating on average about \$8.1 billion in PA funding for these disasters per year.<sup>108 109</sup> The number and cost of weather and climate disasters are increasing in the United States due to a combination of an increase in assets being exposed to risk, the level of damage a hazard of given intensity causes at a location, and the fact that climate change is increasing the frequency of some types of extreme

<sup>108</sup> National Oceanic & Atmospheric Administration (NOAA). (2021). *2020 U.S. billion-dollar weather and climate disasters in historical context*. Adam B. Smith. <https://www.climate.gov/news-features/blogs/beyond-data/2020-us-billion-dollar-weather-and-climate-disasters-historical>.

<sup>109</sup> FEMA analyzed the data for obligated PA projects up to September 30, 2020. Obligation of disaster funding can occur after the disaster year.

weather events that lead to high-cost disasters.<sup>110</sup>

xiii. Alternatives Considered

FEMA has evaluated several alternative regulatory approaches within FEMA’s statutory discretion for implementing the final rule in accordance with Section 6(a)(3)(c) of Executive Order 12866, “Regulatory Planning and Review,” and the formal principles of OMB’s Circular A–4. Alternative approaches include different implementation methods for the final rule.

The alternatives for this final rule would be to leave the maximum threshold unchanged or increase it to a different maximum.

FEMA considered four alternatives for this final rule. FEMA considered:

<sup>110</sup> U.S. Global Change Research Program (USGCRP). (2018). *Fourth National Climate Assessment, Chapter 2: Our Changing Climate*. <https://nca2018.globalchange.gov/chapter/2/>.

- Leaving the maximum threshold unchanged at \$132,800 for FY 2021;
- Increasing the maximum threshold to \$250,000 for FY 2021;
- Increasing the maximum threshold to \$500,000 for FY 2021; and
- Increasing the maximum threshold to \$750,000 for FY 2021.

Annual inflation adjustments will continue each fiscal year pursuant to SRIA.

**Current Threshold**

If FEMA did not increase the maximum threshold, no regulatory or other program changes would be required. The current threshold would still achieve the goal of capturing a majority of the small PA projects at 76.8 percent; however, it would be a smaller percentage than the original goal in 1988 of 95 percent.<sup>111</sup> The funding for small projects accounts for 2.4 percent of the total funding of PA projects at the current threshold. There would be 14,334 large projects and 47,376 small projects.

**\$250,000 Threshold**

If FEMA were to increase the maximum threshold to \$250,000 for FY 2021, it would require regulatory changes. This would increase the percentage of small PA projects to 83.9 percent; however, it would be a smaller percentage than the original goal in 1988 of 95 percent. The funding for small projects would account for 3.6 percent of the total funding of PA projects. The number of large projects

over the 3.1-year period of analysis would decrease from a current 14,334 to 9,960, or a decrease of 4,374 (14,334 – 9,960), which is approximately a 30.5 ((14,334 – 9,960) ÷ 14,334) percent decrease from the current threshold. The number of recipients with at least 1 ongoing large project would reduce by 1, from 56 to 55. The 4,374 decrease in the number of large projects would have an estimated cost savings of \$5,336,280 (4,374 × \$1,220) for FEMA. The decrease in number of projects and 1 fewer recipient would have an estimated cost savings of \$559,266 ((4,374 × \$112) + (\$5,595 × 4 quarters × 3.1 years)) for recipients and subrecipients.

**\$500,000 Threshold**

If FEMA were to increase the maximum threshold to \$500,000 for FY 2021, it would require regulatory changes. This would increase the percentage of small PA projects to 90.0 percent; however, it would be a smaller percentage than the original goal in 1988 of 95 percent. The funding for small projects would account for 5.6 percent of the total funding of PA projects. The number of large projects over the 3.1-year period of analysis would decrease from 14,334 to 6,156, or a decrease of 8,178 (14,334 – 6,156), which is approximately a 57.1 ((14,334 – 6,156) ÷ 14,334) percent decrease from the current threshold. The number of recipients with at least 1 ongoing large project would reduce by

1, from 56 to 55. The 8,178 decrease in the number of large projects would have an estimated cost savings of \$9,977,160 (8,178 × \$1,220) for FEMA. The decrease in number of projects and 1 fewer recipient would have an estimated cost savings of \$985,314 ((8,178 × \$112) + (\$5,595 × 4 quarters × 3.1 years)) for recipients and subrecipients.

**\$750,000 Threshold**

If FEMA were to increase the maximum threshold to \$750,000 for FY 2021, it would require regulatory changes. This would increase the percentage of small PA projects to 92.8 percent; however, it would be a smaller percentage than the original goal in 1988 of 95 percent. The funding for small projects would account for 7.1 percent of the total funding of PA projects. The number of large projects over the 3.1-period of analysis would decrease from 14,334 to 4,469, or a decrease of 9,865 (14,334 – 4,469), which is approximately a 68.8 ((14,334 – 4,469) ÷ 14,334) percent decrease from the current threshold. The number of recipients with at least 1 ongoing large project would reduce by 1, from 56 to 55. The 9,865 decrease in the number of large projects would have an estimated cost savings of \$12,035,300 (9,865 × \$1,220) for FEMA. The decrease in number of projects and 1 fewer recipient would have an estimated cost savings of \$1,174,258 ((9,865 × \$112) + (\$5,595 × 4 quarters × 3.1 years)) for recipients and subrecipients.

**TABLE 11—PA PROJECTS AND AGGREGATE PROJECT AMOUNTS SINCE THE ADOPTION OF THE PA DELIVERY MODEL (3.1-YEAR PERIOD). ADJUSTED FOR EACH ALTERNATIVE THRESHOLDS**

	\$250K Threshold	\$500K Threshold	\$750K Threshold	\$1M Threshold
Number of Small Projects .....	51,750	55,554	57,241	58,234
Percentage of Small Projects to Total Projects .....	83.9%	90.0%	92.8%	94.4%
Number of Large Projects .....	9,960	6,156	4,469	3,476
Percentage of Large Projects to Total Projects .....	16.1%	10.0%	7.2%	5.6%
Total Small Project Funding .....	\$2,432,028,984	\$3,777,518,663	\$4,812,471,896	\$5,670,643,149
Percentage of Small Project Funding to Total Project Funding .....	3.6%	5.6%	7.1%	8.4%
Total Large Project Funding .....	\$65,227,965,358	\$63,882,475,679	\$62,847,522,446	\$61,989,351,193
Percentage of Large Project Funding to Total Project Funding .....	96.4%	94.4%	92.9%	91.6%

**TABLE 12—COST SAVINGS FOR MAXIMUM THRESHOLDS ALTERNATIVES**

Admin cost savings to FEMA	\$250K Threshold	\$500K Threshold	\$750K Threshold	\$1M Threshold
Increases in the number of small projects PWs .....	4,374	8,178	9,865	10,858
Cost Savings from Processing Each Small Project over a Large Project .....	\$1,220	\$1,220	\$1,220	\$1,220
Estimated Total Cost savings to FEMA .....	\$5,336,280	\$9,977,160	\$12,035,300	\$13,246,760

<sup>111</sup> The Disaster Relief and Emergency Assistance Amendment of 1988 introduced the Simplified Procedures maximum threshold to reduce

administrative expenses and time associated with a Federal disaster grant. Congress initially selected \$35,000 as the threshold because “damage survey

reports of less than \$35,000 have constituted 95 percent of all damage survey reports but only 32 percent of all expended dollars.”



TABLE 12—COST SAVINGS FOR MAXIMUM THRESHOLDS ALTERNATIVES—Continued

Admin cost savings to FEMA	\$250K Threshold	\$500K Threshold	\$750K Threshold	\$1M Threshold
Admin Cost Savings to Recipient and Subrecipient	.....	.....	.....	.....
<b>FEMA Forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127</b>				
Decrease in the number of large projects PWs .....	4,374	8,178	9,865	10,858
Dollars per PW to recipients/subrecipients (reduction in forms) .....	\$112	\$112	\$112	\$112
Estimated Cost Savings for the Five Forms .....	\$489,888	\$915,936	\$1,104,880	\$1,216,096
<b>FEMA Form 009–0–111</b>				
Decrease in the Number of Recipients from the Current Threshold .....	1	1	1	1
Cost savings from Submitting Fewer Forms .....	\$69,378	\$69,378	\$69,378	\$69,378
Estimated Cost Savings for FEMA Form 009–0–111 .....	\$69,378	\$69,378	\$69,378	\$69,378
Estimated Total Cost Savings to Recipients and Subrecipients .....	\$559,266	\$985,314	\$1,174,258	\$1,285,474
Total Administrative Cost Savings .....	\$5,895,546	\$10,962,474	\$13,209,558	\$14,532,234

After analyzing the five potential thresholds, FEMA selected a threshold of \$1,000,000 because it would bring Simplified Procedures closest to the initial policy benchmarks, raising the percentage of small projects from 77 percent back to 94.4 percent and raising the percentage of PA disaster funding for small projects from 2.4 percent to 8.4 percent.

*C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, 110 Stat. 847, 858–59 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. The RFA applies only when an agency is “required by section 553 . . . to publish general notice of proposed rulemaking for any proposed rule.” 5 U.S.C. 603(a). An RFA analysis is not required for this rulemaking because FEMA is not required to publish a notice of proposed rulemaking.

*D. 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 rulemaking which is likely to result in the promulgation of 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 such a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act

also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements.

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. In addition, this rulemaking falls under an exclusion to this Act for rules that provide for emergency assistance or relief at the request of any State, local, or Tribal government. See 2 U.S.C. 1503(4). Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*E. Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C. 3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. See 44 U.S.C. 3506, 3507.

In this rule, FEMA is seeking a revision to the already existing collection of information, OMB Control Number 1660–0017. This rule revises FEMA’s regulations governing the Public Assistance program at 44 CFR 206.203(c) to increase the monetary threshold for when FEMA will process

an application using “simplified procedures” to \$1,000,000. For this information collection, the number of annual responses is decreasing from 449,084 to 431,720, the annual burden hours are decreasing from 491,533 to 484,189, and the annual cost to respondents is decreasing from \$27,845,344 to \$27,090,374. These changes are due to a decrease in the number of responses for FEMA Forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127 and for the number of respondents for FEMA Form 009–0–111. FEMA requires that recipients of large projects fill out these supplemental forms to account for the actual costs for reconciliation purposes. These forms are not required for small projects. The decrease in the number of large projects as a result of the increase in the large project threshold means fewer applicants submitting these forms.

Collection of Information

*Title:* PA Program.  
*Type of information collection:* Revision of a currently approved collection.  
*OMB Number:* 1660–0017.  
*Forms:* FEMA Form 009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work Continuation Sheet; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record;

FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126 Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant’s Benefits Calculation Worksheet; FEMA Form 009–0–111, Quarterly Progress Report; FEMA Form 009–0–141, FAC–TRAX System.

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

*Affected Public:* State, local, or Tribal Government.

*Estimated Number of Respondents:* 1,067.

*Estimated Number of Responses:* 431,720.

*Estimated Total Annual Burden Hours:* 484,189.

The table below provides estimates of annualized cost to respondents for the hour burdens for the collection of information.

TABLE 13—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	FEMA Form 009–0–49, Request for PA	56	129	7,224	0.25	1,806	\$55.95	\$101,046
State, Local or Tribal Government.	FEMA Form 009–0–91, Project Worksheet (PW) and a Request for Time Extension.	56	840	47,040	1.5	70,560	55.95	3,947,832
State, Local or Tribal Government.	FEMA Form 009–0–91A Project Work Sheet (PW) Damage Description and Scope of Work.	56	784	43,904	1.5	65,856	55.95	3,684,643
State, Local or Tribal Government.	FEMA Form 009–0–91B, Project Worksheet (PW) Cost Estimate Continuation Sheet and Request for additional funding for Cost Overruns.	56	784	43,904	1.3333	58,537	55.95	3,275,145
State, Local or Tribal Government.	FEMA Form 009–0–91C Project Worksheet (PW) Maps and Sketches Sheet.	56	728	40,768	1.5	61,152	55.95	3,421,454
State, Local or Tribal Government.	FEMA Form 009–0–91D Project Worksheet (PW) Photo Sheet.	56	728	40,768	1.5	61,152	55.95	3,421,454
State, Local or Tribal Government.	FEMA Form 009–0–120, Special Considerations Questions/.	56	840	47,040	0.5	23,520	55.95	1,315,944
State, Local or Tribal Government.	FEMA Form 009–0–128, Applicant’s Benefits Calculation Worksheet/.	56	784	43,904	0.5	21,952	55.95	1,228,214
State, Local or Tribal Government.	FEMA Form 009–0–121, PNP Facility Questionnaire.	56	94	5,264	0.5	2,632	55.95	147,260
State, Local or Tribal Government.	FEMA Form 009–0–123, Force Account Labor Summary Record <sup>112</sup> .	56	32	1,792	0.5	896	55.95	50,131
State, Local or Tribal Government.	FEMA Form 009–0–124, Materials Summary Record/.	56	32	1,792	0.25	448	55.95	25,066
State, Local or Tribal Government.	FEMA Form 009–0–125, Rented Equipment Summary Record.	56	32	1,792	0.5	896	55.95	50,131
State, Local or Tribal Government.	FEMA Form 009–0–126, Contract Work Summary Record/.	56	32	1,792	0.5	896	55.95	50,131
State, Local or Tribal Government.	FEMA Form 009–0–127, Force Account Equipment Summary Record/.	56	32	1,792	0.25	448	55.95	25,066
State, Local or Tribal Government.	State Administrative Plan and State Plan Amendments/No Form.	56	1	56	8	448	55.95	25,066
State, Local or Tribal Government.	FEMA Form 009–0–111, Quarterly Progress Report.	55	4	220	100	22,000	55.95	1,230,900
State, Local or Tribal Government.	Request for Appeals or Arbitrations & Recommendation/No Forms.	56	9	504	3	1,512	55.95	84,596
State, Local or Tribal Government.	Request for Arbitration & Recommendation resulting from Hurricanes Katrina or Rita/No Form.	4	5	20	3	60	55.95	3,357
State, Local or Tribal Government.	FEMA Form 009–0–141, FAC–TRAX System.	56	913	51,128	1.25	63,910	55.95	3,575,765
State, Local or Tribal Government.	FEMA Template 104–FY–21–100 Equitable COVID–19 Response and Recovery.	56	911	51,016	0.5	25,508	55.95	1,427,173
<b>Total</b>		<b>1,067</b>		<b>431,720</b>		<b>484,189</b>		<b>27,090,374</b>

**Note:** The “Avg. Hourly Wage Rate” for each respondent includes a 1.6 multiplier to reflect a fully-loaded wage rate.

<sup>112</sup> FEMA uses whole numbers for burden estimates in this table. These estimates do not match the RIA, since at the \$1,000,000 threshold, FEMA calculated a total of 1,761 responses for forms 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–0127. The number of respondents would remain the same at 56, while the average number of responses per respondent would be 31.45 (rounded up to 32 for the PRA analysis). In

*Estimated Total Annual Respondent Cost:* \$27,090,374.

*Estimated Respondents’ Operation and Maintenance Costs:* N/A.

*Estimated Respondents’ Capital and Start-Up Costs:* N/A.

the RIA, the total number of responses was estimated to be 1,761(56 × 31.45).

*Estimated Total Annual Costs to the Federal Government:* \$1,957,204.

FEMA calculated the impact on the Information Collection Request if the maximum threshold were changed from \$132,800 to \$1,000,000 by taking the difference in the number of large projects at the \$132,800 threshold compared to the \$1,000,000 threshold. At the \$132,800 threshold, there are

14,334 large projects over 3.1 years. At the \$1,000,000 threshold, there are 3,476 large projects in 3.1 years. FEMA earlier mentions the 10,858 (14,334 – 3,476) projects that will now be considered small from these numbers of projects over 3.1 years. Annually, there will be 3,503 (10,858 ÷ 3.1) additional small projects that were formerly large.

FEMA then calculated the total number of responses for each form at the \$1,000,000 threshold by taking the total number of responses at the \$132,800 threshold and then subtracting 3,503. For FEMA Form 009–0–123, 009–0–124, 009–0–125, 009–0–126, and 009–0–127, FEMA estimates there will be 1,761 (5,264 – 3,503) total number of responses for each of these forms at the \$1,000,000 threshold. FEMA then analyzed the data to determine then number of recipients who would not have at least one ongoing large project if the maximum threshold were \$1,000,000 compared to those who would at the \$132,800 threshold. Over the 3.1-year period, the number of recipients with at least 1 ongoing large project would reduce by 1, from 56 to 55, meaning 1 fewer recipient would submit FEMA Form 009–0–111. The total number of responses to the quarterly form would reduce by 12.4 (4 responses × 3.1) over the 3.1-year period, or by approximately 4 responses annually.

#### F. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a 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, one’s education, financial transactions, medical history, and criminal or employment history and that contains one’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information

technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with U.S. Department of Homeland Security (DHS) policy, FEMA has completed a Privacy Threshold Analysis for this rule. FEMA has determined this rulemaking does not require the development and publication of a new or modified System of Records Notice (SORN). The information collected has coverage under an existing Privacy Impact Assessments (PIA) and an existing SORN:

DHS/FEMA/PIA–013 Grant Management Programs;

DHS/FEMA–009 Hazard Mitigation Assistance Grant Programs SORN.

The rule does not impact the personally identifiable information (PII) that FEMA currently collects, stores, maintains, or disseminates. The rulemaking has adequate coverage under the above listed PIA and SORN.

#### G. Executive Order 13175, “Consultation and Coordination With Indian Tribal Governments”

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249 (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

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

power and responsibilities between the Federal Government and Indian Tribes. This rule updates the dollar figure related to FEMA’s procedures for handling grants for small and large projects. It is therefore procedural and will not affect the substantive rights or interests of Indian Tribal governments.

#### H. Executive Order 13132, “Federalism”

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has determined that this rulemaking does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order.

#### I. Executive Order 11988, “Floodplain Management”

Pursuant to Executive Order 11988, “Floodplain Management,” 42 FR 26951 (May 24, 1977), each agency must provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures

to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the 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. It must also prepare and circulate a notice containing an explanation of why the action is to be located in the floodplain.

The purpose of this rule is to update the dollar figure related to FEMA's procedures for handling grants for small and large projects. In accordance with 44 CFR part 9, "Floodplain Management and Protection of Wetlands," FEMA determines that the changes in this rule would not have an effect on floodplains. When FEMA undertakes specific actions that may affect floodplain management, FEMA follows the procedures set forth in 44 CFR part 9 to ensure compliance with this Executive Order. These procedures include a specific, eight-step process for conducting floodplain management and wetland reviews. With few exceptions (such as emergencies) and as set forth in applicable statutes or regulations, reviews for compliance must be completed before FEMA approves funding and before work is started. This rule does not change this process.

*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. These responsibilities include (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 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. These include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; 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. They also include other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The purpose of this rule is to update the dollar figure related to FEMA's procedures for handling grants for small and large projects. In accordance with 44 CFR part 9, "Floodplain Management and Protection of Wetlands," FEMA determines that the changes in this rule would not have an effect on wetlands. When FEMA undertakes specific actions that may affect floodplain management, FEMA follows the procedures set forth in 44 CFR part 9 to ensure compliance with this Executive Order. These procedures include a specific, eight-step process for conducting floodplain management and wetland reviews. With few exceptions (such as emergencies) and as set forth in applicable statutes or regulations, reviews for compliance must be completed before FEMA approves funding and before work is started. This rule does not change this process.

*K. Executive Order 12898, "Environmental Justice"*

Pursuant to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 FR 7629 (Feb. 16, 1994), as amended by Executive Order 12948, 60 FR 6381 (Feb. 1, 1995), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human

health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

This rulemaking will not result in disproportionately high or adverse effects on human health or the environment. The purpose of this rule is to update the dollar figure related to FEMA's procedures for handling grants for small and large PA projects. The PA program provides funding to States, local governments, Tribal governments, and PNP facilities/organizations to assist them in their emergency response and disaster response and recovery efforts. The rulemaking will not have the effect of excluding persons from participation in or denying persons the benefit of this program, nor will it subject persons to discrimination because of race, color, or national origin. The PA program is administered consistent with the nondiscrimination requirements of 44 CFR 206.11 and section 308 of the Stafford Act, 42 U.S.C. 5151.

*L. National Environmental Policy Act of 1969 (NEPA)*

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to consider the impacts of their major actions on the quality of the human environment. Each agency can develop categorical exclusions (CATEXs) to cover major Federal actions that have been demonstrated to not typically trigger significant impacts to the human environment individually or cumulatively. If an action does not qualify for a CATEX and has the potential to significantly affect the environment, Federal agencies conduct environmental assessments (EAs) to evaluate those actions. The Council on Environmental Quality's (CEQ) procedures for implementing NEPA, 40 CFR parts 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EISs) for major Federal actions significantly affecting the quality of the human environment. At the end of the EA process, the agency determines whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process. A major federal action may be categorically excluded under a Federal agency's NEPA procedures and if there are no extraordinary circumstances. 40 CFR 1507.3, 1508.4. This rule falls within the scope of the

Department of Homeland Security List of Categorical Exclusion A3(a), which covers rules of a strictly administrative or procedural nature. The update to the monetary threshold in this rule will have no significant effect on the human environment, is categorically excluded consistent with DHS procedure and NEPA regulations, and no extraordinary circumstances have been identified. Therefore, 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).

#### M. National Historic Preservation Act

The National Historic Preservation Act (NHPA) (54 U.S.C. 300101, formerly 16 U.S.C. 470) was enacted in 1966, with various amendments throughout the years. Section 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to consider the effects of its actions, referred to as an “undertaking,” on any historic property listed, or eligible for listing, on the National Register. Section 106 requires the Federal agency to consult with any Federal agencies, State, local, and Tribal governments, and members of the public who have an interest in the effects of the undertaking. Section 106 mandates the consultation process in the early stages of project planning and that it be completed prior to the approval of expenditure of any Federal funds for the undertaking. Subpart B of 36 CFR part 800 lays out a four-step Section 106 process to fulfill this obligation: 1—Initiate the process (800.3); 2—Identify historic properties (800.4), 3—Assess adverse effects (800.5), and 4—Resolve adverse effects (800.6).

This rule updates the Public Assistance monetary threshold for when FEMA uses the application of simplified procedures for administrative efficiency. Pursuant to section 106 of the NHPA and its implementing regulations at 36 CFR part 800, FEMA has determined that this rulemaking does not have the potential to cause effects to historic properties. In accordance with 36 CFR 800.3(a)(1), FEMA has no further obligations under section 106. When FEMA undertakes specific actions that may affect historic properties, FEMA follows the procedures set forth in 36 CFR part 800 to ensure compliance with this law. These procedures include a specific, four-step process for determining effects to historic properties. With few exceptions (such as emergencies) and as set forth in

applicable statutes or regulations, reviews for compliance must be completed before FEMA approves funding and before work is started. This rule does not change this process.

#### N. Endangered Species Act

The Endangered Species Act (ESA) mandates that Federal agencies determine whether their actions may affect listed species and/or their designated critical habitat (critical habitat has been designated for some, but not all listed species). Without authorization or exemption from Federal resource agencies, it is unlawful for any person, whether government employee or private citizen, to take listed animal species, or remove, damage, or destroy (among other actions) an endangered plant species. 16 U.S.C. 1538, 1539.

To comply with section 7(a)(2) of the ESA, for every action that FEMA carries out, funds, or authorizes, FEMA must first determine if listed species and their designated critical habitat are present in the action area. If species are present in the action area, then FEMA must make one of the following determinations with respect to the effect of the action on listed species and critical habitat: (1) No Effect (NE); (2) May affect, but is not likely to adversely affect (NLAA); or (3) May affect and is likely to adversely affect (LAA).

This rule would update the Public Assistance monetary threshold for when FEMA uses the application of simplified procedures for administrative efficiency. This rulemaking has been evaluated by FEMA and due to its administrative nature, FEMA has determined the rulemaking does not have the potential to affect federally-listed species or designated critical habitat. As such, FEMA has made a No Effect determination for this rulemaking. Per the ESA regulations, notification to, and consultation with, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service are not required for activities with a No Effect determination. When FEMA undertakes specific actions that may affect listed species and their designated critical habitat, FEMA follows the procedures set forth in section 7(a)(2) to ensure compliance with this law. These procedures include a process for determining the effect of the action on listed species and critical habitat. The rule does not change this process.

#### O. 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 final 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 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 § 206.203:

- a. In paragraphs (c)(1) and (2), remove “\$120,000” and add in its place “\$1,000,000” wherever it appears; and
- b. Add paragraph (c)(3).

The addition reads as follows:

#### § 206.203 Federal grant assistance.

\* \* \* \* \*

(c) \* \* \*  
(3) *Applicability date.* The dollar threshold provided in this paragraph (c) applies to project worksheets that have

not been obligated as of August 3, 2022

for major disasters and emergencies declared on or after March 13, 2020.

\* \* \* \* \*

**Deanne B. Criswell,**  
*Administrator, Federal Emergency  
Management Agency.*

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