

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 206

[Docket ID FEMA–2023–0005]

RIN 1660–AB09

#### Update of FEMA’s Public Assistance Regulations

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Emergency Management Agency (FEMA, agency, or we) proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

**DATES:** Comments must be submitted by September 3, 2024.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA–2023–0005, via the Federal eRulemaking Portal: [www.regulations.gov](http://www.regulations.gov). Search for the Docket ID and follow the instructions for submitting comments.

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- ADA Americans with Disabilities Act
- CDL Community Disaster Loan
- CFR Code of Federal Regulations
- CPI–U Consumer Price Index for All Urban Consumers
- CRA Congressional Review of Agency Rulemaking Act
- DFA Direct Federal Assistance
- DHS Department of Homeland Security
- DRRA Disaster Recovery Reform Act
- EA Environmental Assessment
- EMAC Emergency Management Assistance Compact
- FEMA Federal Emergency Management Agency
- GAO Government Accountability Office
- HOW Houses of Worship
- HUD Department of Housing and Urban Development
- NAC National Advisory Committee
- NEPA National Environmental Policy Act
- NIST National Institute of Standards and Technology
- OMB Office of Management and Budget
- PAPPG Public Assistance Program and Policy Guide
- PKEMRA Post-Katrina Emergency Management Reform Act of 2006
- PNP Private Nonprofit
- PV Present Value
- SBA Small Business Administration
- SORN System of Records Notice
- SRIA Sandy Recovery Improvement Act of 2013
- Stafford Act Robert T. Stafford Disaster Relief and Emergency Assistance Act

#### I. Public Participation and Request for Comments

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–2023–0005, 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 eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of [www.regulations.gov](http://www.regulations.gov).

For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov).

#### II. Executive Summary

##### A. Background and Purpose of the Regulatory Action

FEMA is responsible for administering and coordinating the Federal Government response to Presidentially declared disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), Public Law 93–288, 42 U.S.C. 5121 *et seq.* When a catastrophe occurs in a State or affects the members of a Tribal community, the State’s Governor or Tribal Chief Executive may request a Presidential declaration of a major disaster pursuant to Section 401 of the Stafford Act.<sup>1</sup> Such a request must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State or Tribal government and the affected local governments, and that Federal assistance is necessary.<sup>2</sup> The President’s declaration of a disaster will designate the areas within a State, or for an Indian Tribal government, where Federal assistance may be made available (including local governments such as counties, parishes, or Tribal lands, if appropriate) and identify the types of assistance that are authorized under the declaration,<sup>3</sup> although other types may be authorized later.<sup>4</sup> A major disaster declaration may authorize all, or only particular types of, supplemental Federal assistance requested by the Governor or Tribal Chief Executive.<sup>5</sup>

One of the programs that may be authorized by a declaration is the Public Assistance program, which provides a broad range of assistance to State, Tribal, Territorial and local governments.<sup>6</sup> It provides assistance for

<sup>1</sup> 42 U.S.C. 5170(a), (b); 44 CFR 206.36(a).

<sup>2</sup> 42 U.S.C. 5170.

<sup>3</sup> 44 CFR 206.40(a).

<sup>4</sup> 44 CFR 206.40(c).

<sup>5</sup> 44 CFR 206.40(a).

<sup>6</sup> Generally, the State, Territorial, or Indian Tribal government for which the emergency or major disaster is declared is the recipient. The applicant is a State, Tribal, or Territorial agency, local government, or eligible private nonprofit organization submitting an application to the

emergency protective measures, such as emergency evacuation, sheltering, and debris removal, as well as financial assistance for the permanent restoration of facilities.<sup>7</sup> In addition, the Stafford Act authorizes Community Disaster Loans for any local or Tribal government that has suffered a substantial loss of tax and other revenues as a result of a major disaster, and that demonstrates a need for financial assistance to perform its governmental functions.<sup>8</sup>

FEMA proposes to amend its Public Assistance and Community Disaster Loan program regulations to both improve program administration and incorporate statutory changes relating to Public Assistance and Community Disaster Loans. These include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438.

### B. Summary of Major Provisions

The proposed rule would amend the Public Assistance program regulations at Title 44, part 206, of the Code of Federal Regulations (CFR) to reflect current statutory authorities, clarify the requirements for program eligibility, and improve program administration. Most notably, FEMA proposes to:

- Incorporate PKEMRA:
  - Amend section 206.11 to include “disability” and “English proficiency” in the list of the grounds upon which discrimination in the provision of assistance is prohibited.
  - Amend section 206.221 to include performing arts facilities and community arts facilities as eligible Private Nonprofit (PNP) facilities.
  - Amend section 206.225 to cover essential assistance for the rescue, care, shelter, and essential needs of

household pets, service animals, and assistance animals.

- Amend section 206.226(c)(1) (proposed section 206.226(i)(1)) to include education in the list of critical services that qualify PNPs to apply for Public Assistance without having first applied for an SBA loan.
  - Incorporate SRIA:
    - Amend section 206.228 to incorporate Public Assistance Alternate Procedures for Debris Removal (Stafford Act section 428) to make straight-time labor costs eligible for budgeted employees conducting eligible debris removal activities.
    - Make revisions throughout 44 CFR part 206 to reflect that Indian Tribal governments may act as recipients or subrecipients for the Public Assistance program.
      - Incorporate the Bipartisan Budget Act of 2018:
        - Amend the definition of “private nonprofit organization” in section 206.2(19) and section 206.221 to clarify requirements for houses of worship (HOWs) that may be exempt from the requirements to apply for tax exempt status under Internal Revenue Code 501(c)(3) or applicable State laws.
        - Amend definition of “private nonprofit facility” in section 206.221 to include HOWs and change the term “essential governmental service facilities” to “essential social services facilities.”
          - Incorporate DRRA:
            - Amend section 206.12 to include long-term recovery groups, domestic hunger relief organizations, and other relief organizations.
            - Amend section 206.201 to add definitions of the terms “resilient” and “resiliency.”
            - Revise proposed sections 206.204(b)(4) and 206.226 to eliminate funding reductions for alternate projects.
              - Amend definition of “private nonprofit facility” in section 206.221 to include “center-based childcare” facilities.
              - Amend definition of “essential social service facility” in section 206.221 to include food banks.
              - Amend section 206.226(d) (proposed section 206.226(c)) to incorporate the requirement to use the latest codes and standards.
                - Remove the definition of “emergency work” in section 206.201 and refer to “debris removal” and “emergency protective measures” separately in sections 206.204 (proposed section 206.205), 206.208 (proposed section 206.209), and 206.225, due to differing legal criteria between debris

removal and emergency protective measures.

- Amend section 206.202(d)(2) (proposed section 206.202(d)(4)) to apply the minimum threshold to each site within a Project Worksheet (PW) rather than to the PW as a whole to prevent applicants from improperly grouping together de minimis sites to reach the threshold.
  - Amend section 206.202(d) to provide deadlines for the submission of certain work and cost documentation to avoid undue delay and administrative cost and to help ensure timely recovery.
    - Amend section 206.202(e) to remove a non-statutory deadline previously imposed on FEMA for obligation of funds to provide the necessary flexibilities to maintain the smooth administration of the Public Assistance program.
      - Amend section 206.205 (proposed section 206.206) to add deadlines for the submission of small project certifications and large project cost documentation to help ensure timely closeout of projects.
        - Amend section 206.221 to reflect current Stafford Act definitions, which include rehabilitational facilities and broadcasting facilities.
        - Amend section 206.225 to add paragraph addressing temporary relocation of public and nonprofit facilities that provide an eligible essential community service and define “essential community services.”
          - Amend subpart K, “Community Disaster Loans,” to reflect the current statutory loan maximums.
          - Align terminology and definitions with 2 CFR part 200, tailoring to FEMA authorities and requirements as needed.

### III. Discussion of the Proposed Rule

This proposed rule would revise FEMA’s Public Assistance program and FEMA’s Community Disaster Loan regulations to reflect current statutory authority and agency practice. FEMA is also proposing amendments to improve the efficiency and consistency of the Public Assistance program and improve Public Assistance applicants’ understanding of the program. This rule would affect 44 CFR 206.2, 206.11–12, 206.62, 206.200–210, 206.220–228, 206.361, and 206.363–364.

Throughout this rule, FEMA proposes a number of non-substantive, clarifying edits as follows, which will not generally be discussed separately in the section-by-section analysis below. FEMA proposes to revise the word “shall” to “must” or “will” and the word “which” to “that” as appropriate, consistent with current drafting best practices. FEMA intends these edits to

recipient for assistance under the recipient’s grant. Upon award, the recipient notifies the applicant of the award, and the applicant becomes a subrecipient.

<sup>7</sup> 42 U.S.C. 5170b, 5172, and 5173.

<sup>8</sup> 42 U.S.C. 5184.

clarify, but not change, the regulations' meaning. Similarly, this rule proposes a number of non-substantive typographical corrections, stylistic edits to improve clarity, and citation corrections. FEMA also proposes to update references to various FEMA positions and offices to reflect their current titles, such as replacing "Disaster Assistance Directorate" with "Recovery Directorate." Similar terminology changes include replacing "event" with "incident," to improve clarity by matching the defined term in 44 CFR 206.32(e), and replacing "grant" with "award," to improve clarity by matching the terminology used in 2 CFR part 200.

FEMA proposes to replace references in its regulations to "Project Worksheet" with the generic term "Project Application"<sup>9</sup> because FEMA is in the process of revising information collection 1660-0017, Public Assistance Program, to, *inter alia*, refer to "Project Application", where it previously referred to "Project Worksheet." These proposed changes to FEMA's regulations would not change how the form is used or processed in the Public Assistance program. Instead, FEMA proposes this amendment to ensure clarity and consistency in the regulations.

Additionally, FEMA proposes to redesignate various sections to reflect the addition or removal of other sections and to update internal cross-references accordingly. Further, the proposed rule includes revisions to FEMA's regulations to reflect that Indian Tribal governments (Tribal Governments or Tribes) may be recipients or subrecipients for the purpose of Public Assistance, consistent with section 1110 of SRIA.<sup>10</sup> Finally, FEMA proposes to revise various sections throughout the rule to make clear that, where appropriate, a Regional Administrator's designee may take actions on his or her behalf, such as reviewing proposals and approving extensions of time. This is not a substantive change, but simply makes the use of a designee explicit to improve clarity.

In early preparation for this rulemaking, FEMA solicited input from the Administrator's National Advisory Council (NAC). The NAC recommended

<sup>9</sup> When discussing other proposed changes in this rule, we use the term "Project Worksheets" to avoid confusion.

<sup>10</sup> Public Law 113-2, 127 Stat. 39, 47. Tribal declaration requests are currently handled under FEMA's Tribal Declarations Pilot Guidance, and this rule does not propose any changes to those procedures. For more information, see Tribal Declarations Pilot Guidance, <https://www.fema.gov/disaster/tribal-declarations> (last accessed June 12, 2024).

revisions to the Public Assistance regulations to reflect FEMA's post-Katrina practices and post-Katrina legislative amendments to the Stafford Act.<sup>11</sup> The NAC's recommendations included improving State administrative plans, streamlining and improving project worksheets, and reimbursing State, Tribal, Territorial, and local governments for force-account labor for emergency protective measures and debris removal. Consistent with those recommendations, FEMA is proposing updates to its regulations to reflect current statutory authorities and agency practices. As is discussed in more detail below, this rule proposes revisions to the project application process and State administrative plan requirements and proposes adding a provision that reflects the eligibility of straight-time force account labor for debris removal, which FEMA previously implemented via policy.

#### A. 44 CFR Part 206, Subpart A—General

##### i. Section 206.2 Definitions

Section 206.2 sets forth the defined terms that apply throughout 44 CFR part 206.

FEMA proposes to revise paragraph (a)(14) to clarify that the term "hazard mitigation" means any cost-effective measure intended to reduce the potential for damage from a "future" disaster event. Hazard mitigation does not address damage from disasters that have already occurred. This is not a substantive change and is simply intended to improve clarity.

Also, in paragraph (a)(14), FEMA proposes to change the word "event" to "impacts." While throughout the rest of this rule we are proposing to replace "event" with "incident," to improve clarity by matching the defined term in 44 CFR 206.32(e), in paragraph (a)(14), it is more accurate to refer to the impacts of a disaster, since those impacts are what mitigation measures seek to address. The use of this term is consistent with FEMA's guidance on the subject.<sup>12</sup> This is not a substantive change and does not change the meaning of "hazard mitigation."

<sup>11</sup> See NAC Memo, Recommendations on the Stafford Act and Related Federal Regulations: Public Assistance and Individual Assistance Issues (Aug. 19, 2008), available at [https://www.fema.gov/pdf/about/nac/hp/stafford\\_act\\_rec\\_081908.pdf](https://www.fema.gov/pdf/about/nac/hp/stafford_act_rec_081908.pdf).

<sup>12</sup> See Public Assistance Program and Policy Guide, ver. 4, FP 104-002-2, at 153 (June 1, 2020) (PAPPG), 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). Version 5 of the Public Assistance Program and Policy Guide is currently under review by the Office of Information and Regulatory Affairs. FEMA will update the Public Assistance Update final rule to reflect relevant amendments from Version 5.

Instead, we simply intend to improve clarity.

In paragraph (a)(19)(i), FEMA proposes to update the outdated reference to the Internal Revenue Code of 1954. The current authority is the Internal Revenue Code of 1986, as amended.<sup>13</sup>

FEMA also proposes to add a new paragraph (a)(19)(iii) to discuss the requirements for PNP organizations that are exempt from the requirements to apply for Internal Revenue Code section 501(c)(3) status or applicable State or Tribe tax exempt status. Instead of the requirement under paragraphs (a)(19)(i) and (ii) that such an organization must have an effective ruling letter from the Internal Revenue Service or appropriate documentation from the State, FEMA proposes that such an organization may establish their status through: (1) articles of association, bylaws, or other organizing documents indicating that it is an organized entity and (2) a certification that it is compliant with section 501(c)(3) of the Internal Revenue Code and State or Tribal law requirements. This proposed change is consistent with current FEMA guidance on this issue.<sup>14</sup>

We also propose adding a reference to Tribes in paragraph (a)(19)(ii), to make clear that PNP organizations organized under Tribal law do not need to provide documentation from a State due to independent Tribal sovereignty.

Paragraph (a)(20) provides the general definition of "Public Assistance." The definition includes references to other sections in the regulations that contain further information on Public Assistance. We propose to amend those references to add subpart I, Public Assistance Insurance Requirements, subpart J, Coastal Barrier Resources Act, and subpart M, Minimum Standards, which provide additional detail on the Public Assistance program, especially restrictions or limitations on the amount of funding allowed in subparts G and H, Public Assistance Project Administration and Public Assistance Eligibility, respectively. We also propose to replace the words "individuals and families" with "individuals and households," to match the language used in section 408 of the Stafford Act. FEMA intends this change to improve clarity and consistency and is not a substantive change.

We propose adding new paragraphs (a)(26) and (a)(27) to include definitions of the terms "Tribal Authorized Representative" and "Tribal

<sup>13</sup> Tax Reform Act of 1986, Public Law 99-514, sec. 2(a), 100 Stat. 2085, 2095.

<sup>14</sup> See PAPPG at 43.

Coordinating Officer.” These new paragraphs mirror the definitions of “Governor’s Authorized Representative” and “State Coordinating Officer” in (a)(13) and (a)(23). As with the other changes proposed throughout this rule to add references to Indian Tribal governments, these proposed definitions would create provisions for Tribal governments equivalent to those already provided for State governments to ensure consistency with the Stafford Act.

ii. Section 206.11 Nondiscrimination in Disaster Assistance

Section 689a of PKEMRA amended section 308(a) of the Stafford Act to add “disability” and “English proficiency” to the list of protected classes. Public Assistance grant recipients are already prohibited from discrimination on these grounds under other laws as codified in the DHS Standard Terms and Conditions<sup>15</sup> and FEMA has already expanded its civil rights compliance and enforcement activities to include these two additional categories. FEMA now proposes to revise paragraph 206.11(b) to reflect this. The revision would improve consistency and clarity by making the list of classes in paragraph (b) match the list in section 308(a) of the Stafford Act.

In addition, although this proposed revision, and others discussed below, originate from amendments to the Stafford Act, and do not involve the exercise of agency discretion, they are consistent with the principles of equity that FEMA seeks to advance in all its programs. We hope that these changes to the regulations would help highlight these provisions, such as nondiscrimination in disaster assistance, and their importance in every part of FEMA’s mission.

iii. Section 206.12 Use and Coordination of Relief Organizations

Section 309(a) of the Stafford Act authorizes the President to utilize, with their consent, the personnel and facilities of certain relief or disaster assistance organizations in providing relief and assistance under the Act. Section 309(b) authorizes the President to enter into agreements with these same organizations to coordinate their disaster relief activities. This authority is codified in the regulations at 44 CFR 206.12.

<sup>15</sup> See FY 2023 DHS Standard Terms and Conditions (Nov. 29, 2022), <https://www.dhs.gov/sites/default/files/2023-01/FY%202023%20DHS%20Terms%20and%20Conditions%20Version%202%20Dated%20November%2029%202022.pdf>.

Section 1227 of DRRRA amended section 309 of the Stafford Act to add long-term recovery groups and domestic hunger relief and other relief organizations to the lists of organizations whose personnel and facilities may be used and with whom coordination agreements may be entered into. Accordingly, FEMA proposes to revise paragraphs (a) and (b) of section 206.12 to reflect this statutory change by replacing the existing reference to “other voluntary organizations” with “long-term recovery groups, domestic hunger relief organizations, and other relief or voluntary organizations.”

Also, in paragraph (b), FEMA proposes to revise “American Red Cross” to “American National Red Cross” to match the name used in section 309(b) of the Stafford Act.

B. 44 CFR Part 206, Subpart C—Emergency Assistance

In section 206.62, FEMA proposes non-substantive revisions related to Indian Tribal governments. Specifically, current paragraphs (a) through (c) and (g) mention assistance available to State and local governments under an emergency declaration. Section 1110 of SRIA extended this assistance to Indian Tribal governments,<sup>16</sup> but they are not mentioned in this section. FEMA proposes to add explicit references to Indian Tribal governments to properly reflect this eligibility.

C. 44 CFR Part 206, Subpart G—Public Assistance Project Administration

i. Section 206.200 General

Section 206.200 provides a general overview to Subpart G, which governs the administration of the Public Assistance Program. We propose numerous non-substantive changes to this section to make the language more concise and move provisions to other sections in the regulations where they are more logically connected. The proposed amendments, however, would not remove any of the substantive provisions in § 206.200 from part 206 entirely.

We propose to remove the headings of paragraphs (a) and (b), since they are unnecessary and to be consistent with proposed paragraphs (c) and (d), which would not have headings. We further propose to revise paragraph (b) by simplifying its provisions. The first sentence of current paragraph (b)(1) would be redesignated as paragraph (b); the second sentence would be edited for clarity and designated as a new paragraph (c), because it addresses

recipient and subrecipient responsibilities, rather than FEMA’s responsibilities. We specifically propose to remove the words “we expect” from proposed paragraph (c), since adherence to the Stafford Act and FEMA’s regulations is a clear legal requirement.

Current paragraph (b)(2) discusses the applicability of the “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published at 2 CFR parts 200 and 3002. Since the specific applicability of 2 CFR part 200 is addressed in other sections of subpart G,<sup>17</sup> we propose to remove paragraph (b)(2). The proposed rule would replace it with a new paragraph (d) stating generally that the regulations at 2 CFR part 200 apply to all Public Assistance grants and to all recipients and subrecipients of Public Assistance grants except where those provisions are inconsistent with the Stafford Act or FEMA’s regulations. This is a non-substantive change intended to improve clarity and readability.

Current paragraph (b)(2)(i) states that FEMA expects the recipient to inform subrecipients about the status of their applications, including notification of FEMA’s approvals of Project Worksheets and FEMA’s estimates of when FEMA will make payments. These specific requirements more appropriately belong in section 206.202, which addresses application procedures, rather than section 206.200, which addresses general requirements. Therefore, we propose to remove section 206.200(b)(2)(i) and add this provision to section 206.202 in proposed paragraphs (b)(4), on recipient responsibilities, and (e)(2), on grant approval. Notifying subrecipients of FEMA’s approvals is an important requirement and one that warrants repeating in both places in section 206.202.

Section 206.200(b)(2)(ii) states that FEMA expects the recipient to pay the full amounts due to the subrecipient as soon as practicable after FEMA approves payment, including the State contribution required in the FEMA-State Agreement. We propose to remove paragraph (b)(2)(ii) because this provision is already included in current section 206.205(a) (proposed

<sup>17</sup> See current 44 CFR 206.202(a) (stating that the recipient is “responsible for processing subgrants to applicants under 2 CFR parts 200 and 3002, and 44 CFR part 206, and your own policies and procedures”); current 44 CFR 206.205(b) (stating that the recipient shall certify that payments for a project were made in accordance with 2 CFR 200.305); current 44 CFR 206.207(a) (stating that the “Uniform administrative requirements which are set forth in 2 CFR parts 200 and 3002 apply to all disaster assistance grants and subgrants”).

<sup>16</sup> Public Law 113–2, 127 Stat. 39, 47.

206.206(a)), regarding payment of claims for small projects. We propose to add an equivalent provision regarding payment for large projects in proposed section 206.206(b)(3), so that the requirement is still covered in both contexts.

Finally, current section 206.200(b)(2)(iii) states that FEMA expects the recipient to “pay the State contribution consistent with State laws.” Consistent with the other proposed changes to paragraph (b)(2) and for better organization, we propose to remove paragraph (b)(2)(iii) and add this provision to proposed 206.206(b), which addresses payment of claims for large projects. We further propose to add a similar provision for small projects in proposed 206.206(a).

#### ii. Section 206.201 Definitions Used in This Subpart

FEMA proposes several changes to the definitions in section 206.201. We propose to remove the paragraph designations throughout the section and reorder the definitions alphabetically.

We propose to revise the definition of “applicant.” The existing definition includes eligible private nonprofit organizations as identified in Subpart H of this regulation. For clarity, we propose replacing this language with “private nonprofit organization or institution that owns or operates a private nonprofit facility as defined in § 206.221,” which is consistent with the language used in section 206.222(b). Eligibility for FEMA Public Assistance remains facility-based; this revision would not impact the eligibility of facilities operated by private nonprofit organizations.

We propose to remove the definition of “emergency work” in this section to avoid confusion. Under current practice, FEMA identifies two categories of emergency work: debris removal and emergency protective measures. Due to differing legal criteria between the two, we propose to refer to “debris removal” and “emergency protective measures” separately in the sections where the term “emergency work” was used: sections 206.204 (proposed 206.205), 206.208 (proposed 206.209), and 206.225. This revision would improve clarity and would not be a substantive change to the eligibility of emergency work.

In the definition of “facility,” we propose to remove the words “publicly or privately owned” because they are unnecessary and do not affect the meaning of the term. We also propose to replace the word “works” with “structure,” because the latter term is more commonly used in FEMA’s

regulations and guidance. Neither change is substantive or alters the definition of facility; instead, we propose them to improve clarity and consistency.

We propose replacing the defined term “grant” with “award,” consistent with changes proposed throughout this rule to comport with the language used in 2 CFR part 200. We also propose specifying in the definition of the term that it means the financial assistance “that the recipient receives from FEMA” to avoid ambiguity.

We propose removing the definition of “hazard mitigation” in section 206.201 because it is duplicative of the definition in section 206.2. The definition provided in section 206.2 applies throughout 44 CFR part 206 and renders the definition in this section redundant.

We propose to simplify the definition of “permanent work” by replacing the current definition with “work performed pursuant to section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5172.” Recent amendments to section 406, such as DRRA section 1235(b), have rendered the definition of “permanent work” in section 206.201 incomplete or inaccurate. The current definition in section 206.201 ties restorative work to “current applicable standards,” but the Stafford Act now requires “conformity with the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs . . . .”<sup>18</sup> Rather than continuing to update the regulatory definition each time section 406 is amended, we propose to simply refer generally to work performed pursuant to that section. This proposed revision would bring the regulatory definition of the term “permanent work” up to date with the current statutory provisions and avoid unnecessary confusion and administrative burden in the future. This revision would not change eligibility under section 406 or otherwise impact FEMA’s implementation of that section.

We propose to remove from the definition of “project” the statement that “the scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90–91).” The Project Worksheet is a significant part of the Public Assistance process and merits its own definition. Therefore, we propose to add a stand-alone definition describing the items that are included on the form. However,

FEMA is in the process of revising information collection 1660–0017, Public Assistance Program, and will be replacing the term “Project Worksheet” with “Project Application.” Therefore, we propose defining the term “Project Application” instead of “Project Worksheet.” We also propose to remove from the definition of “project” the statement that FEMA “must approve a scope of eligible work and an itemized cost estimate before funding a project.” We propose to capture these requirements in the definitions of “project approval” and “Project Application.”

Also, in the definition of “project approval,” we propose revising the first sentence to replace “the process in which the Regional Administrator, or designee, reviews and signs an approval of work and costs” with “the process in which the Regional Administrator, or designee, reviews a proposed project and approves the work and costs.” FEMA believes the proposed language more clearly and accurately describes the review and approval process. This would be a clarifying edit and would not substantively affect the meaning of the term. Additionally, we propose removing the last sentence of the definition, which states “Such approval is also an obligation of funds to the recipient.” Certain circumstances, such as a lack of available funding, could prevent FEMA from immediately obligating funds upon approval of a Project Worksheet. Removing this language from the definition would avoid confusion in such situations. We also propose replacing “Project Worksheet” with “Project Application, consistent with the pending changes to information collection 1660–0017, Public Assistance Program.

As mentioned above, we propose adding a new definition of “Project Application” to read as follows: “Project Application is used to document the location, scope of work, cost or cost estimate, terms and conditions, and information required for approval. For permanent work, the form is also used to document damage description and dimensions.” This term would be the updated term for “Project Worksheet,” which is not currently defined but is used throughout this subpart. We do not intend for the proposed definition to substantively change how Project Worksheets have been (and Project Applications will be) used in the Public Assistance program. Instead, we simply propose to provide clarity and ensure consistency in FEMA’s regulations.

In 2023, the Biden-Harris Administration issued the National Climate Resilience Framework noting

<sup>18</sup> 42 U.S.C. 5172(e)(1)(A)(ii).

the intensifying impacts of climate change are costing lives, disrupting livelihoods, and causing billions of dollars in damages.<sup>19</sup> The Administration intends for the Federal Government to serve as a partner with local communities by reforming and modernizing Federal programs in ways that strengthen climate resilience. In 2018, Section 1235(d) of the DRRRA amended section 406(e) of the Stafford Act to require that FEMA issue a final rule defining the terms “resilient” and “resiliency.” Consistent with that requirement, we propose defining the term “resilient” as “able to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions” and the term “resiliency” as “the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.” If adopted, these definitions would help promote consistent terminology across FEMA’s programs and would satisfy FEMA’s obligations under DRRRA section 1235(d) and Stafford Act section 406(e).

These definitions mirror the definition of “resilience” used in FEMA’s National Resilience Guidance,<sup>20</sup> which is based on the definition in Presidential Policy Directive (PPD) 21.<sup>21</sup> These definitions also mirror the definition of “resilience” used in the National Climate Resilience Framework.<sup>22</sup> FEMA previously used a similar definition of “resilience” in guidance on DRRRA section 1325(b) and on the Building Resilient Infrastructure and Communities program.<sup>23</sup> FEMA

<sup>19</sup> The White House, National Climate Resilience Framework (September 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/09/National-Climate-Resilience-Framework-FINAL.pdf>.

<sup>20</sup> See FEMA, National Resilience Guidance: Background and Key Concepts (March 2023), [https://www.fema.gov/sites/default/files/documents/fema\\_national-resilience-guidance-project-background\\_2023.pdf](https://www.fema.gov/sites/default/files/documents/fema_national-resilience-guidance-project-background_2023.pdf). See also FEMA, National Resilience Guidance, <https://www.fema.gov/emergency-managers/national-preparedness/plan/resilience-guidance> (last accessed June 12, 2024).

<sup>21</sup> Presidential Policy Directive 21, Critical Infrastructure Security and Resilience (Feb. 12, 2013), available at <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>.

<sup>22</sup> Presidential Policy Directive 21, Critical Infrastructure Security and Resilience (Feb. 12, 2013), available at <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil>. The White House, National Climate Resilience Framework (September 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/09/National-Climate-Resilience-Framework-FINAL.pdf>.

<sup>23</sup> See Consensus-Based Codes, Specifications and Standards for Public Assistance, FEMA Recovery

considered a few other definitions, including two based on PPD–8<sup>24</sup> and a National Institute of Standards and Technology (NIST) definition,<sup>25</sup> but proposes the ones given above as they provide the clearest articulation of resilience principles for the purpose of the Public Assistance program, and for consistency with the National Resilience Guidance.

Consistent with the requirement of DRRRA section 1235(d), FEMA consulted with the heads of relevant Federal departments and agencies in developing these proposed definitions.<sup>26</sup> As part of the National Resilience Guidance, FEMA consulted with a broad range of stakeholders, including the Mitigation Framework Leadership Group (MitFLG) and the Recovery Support Function Leadership Group (RSFLG). These groups comprise a wide range of Federal departments and agencies with equities in national hazard mitigation and Federal recovery efforts, respectively.<sup>27</sup> Consistent with discussion and feedback received during the National Resilience Guidance engagement process, and to promote a common understanding of resilience in alignment with that effort, FEMA proposes to use that definition of “resilience” as the basis for the proposed definitions in this rule.

Lastly, we propose adding a new definition for “site.” This term is used in several places in the Public Assistance program regulations, including in the definition of “project,” but does not currently have its own definition in section 206.201. Consistent with current FEMA guidance,<sup>28</sup> we propose defining “site” as “an individual building, structure, location, or system section.” This definition would not change current practice but would provide clarity for FEMA applicants and improve consistency in FEMA’s regulations.

Interim Policy FP–104–009–11 Ver. 2.1, at 2 n.2 (Dec. 20, 2019), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_DRRRA-1235b-public-assistance-codes-standards-interim-policy.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_DRRRA-1235b-public-assistance-codes-standards-interim-policy.pdf); 87 FR 10805, 10808 (Feb. 25, 2022).

<sup>24</sup> See Presidential Policy Directive 8, National Preparedness (Mar. 30, 2011), available at <https://www.dhs.gov/presidential-policy-directive-8-national-preparedness> (last accessed June 12, 2024).

<sup>25</sup> See Community Resilience Planning Guide for Buildings and Infrastructure Systems, vol. 1, at 9 (May 2016), available at <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1190v1.pdf>; NIST, Community Resilience, <https://www.nist.gov/community-resilience> (last accessed June 12, 2024).

<sup>26</sup> 42 U.S.C. 5172(e)(5)(A).

<sup>27</sup> For more information, see FEMA’s website at <https://www.fema.gov/emergency-managers/national-preparedness/frameworks/mitigation/mitflg> and <https://recovery.fema.gov/about> (last accessed June 12, 2024).

<sup>28</sup> PAPPG at 60.

All other revisions proposed in this section are non-substantive edits to improve clarity and do not affect the meaning of any defined term. This includes the removal of the word “eligible” from the definition of “subaward.” The current reference to “eligible subrecipients” is redundant, since, by definition, subrecipients are applicants who receive a subaward. We propose removing “eligible” to avoid confusion and improve consistency in the regulations. We also propose a minor non-substantive edit to the definition of “subrecipient,” rewording the sentence to use active, instead of passive voice.

### iii. Section 206.202 Application Procedures

In paragraph (a), we propose to remove the statement that “under this section the State is the recipient” because an Indian Tribal government may also be a recipient. We propose to remove this provision rather than correct it because it is unnecessary. The term “recipient,” as defined in section 206.201, includes Indian Tribal governments. Also, in paragraph (a), we propose to remove the reference to 2 CFR part 3002, since that part now only references 2 CFR part 200, and instead simply refer directly to the applicable requirements of part 200. That part applies generally to Public Assistance awards except where inconsistent with the Stafford Act or FEMA’s regulations. The other revisions proposed in this section are all non-substantive clarifying and stylistic edits to improve readability.

We propose to add a new paragraph (b)(4) stating that the recipient is responsible for informing the subrecipient of the status of its application for Public Assistance funding, including FEMA’s approval of the Project Application and the process for disbursement of funds. This requirement currently appears in section 206.200(b)(2)(ii). As explained above for section 206.200, this provision is more appropriately placed in this section, which lists the recipient’s responsibilities, and we propose non-substantive changes to the wording of the provision to better capture those responsibilities and the pending change to information collection 1660–0017, Public Assistance Program. We also propose to re-order existing paragraphs (b)(1), (3), and (4) and make other non-substantive clarifying edits to more accurately describe the recipient’s grant management activities.

We propose to make a clarifying change to paragraph (c), which currently states that the recipient must submit a

request for assistance within 30 days after designation of the area where the damage occurred. Consistent with current FEMA guidance,<sup>29</sup> we propose to reword the paragraph to clarify that the recipient must submit the request no later than 30 calendar days after the area is designated in an emergency or major disaster declaration. We also propose to remove the references to outdated FEMA Form numbers in paragraph (c) and throughout this section. Neither of these proposed changes is substantive.

We propose to reorganize and revise paragraph (d). First, we propose revising the paragraph heading from “Project Worksheets” to “Project Applications,” consistent with the pending revision to FEMA’s Public Assistance forms. In paragraph (d)(1), we propose clarifying that an applicant’s authorized local representative is responsible for ensuring the applicant has submitted all costs or cost estimates. This is not a substantive change but would simply make explicit that submissions may include cost estimates as well as actual costs. For clarity, we also propose removing the words “for funding” from the end of paragraph (d)(1) because they are unnecessary.

We propose moving the first sentence of existing paragraph (d)(1)(i) to the end of paragraph (d)(1) and clarifying that the applicant may be assisted by the recipient or by FEMA in preparing a Project Application for each project. We propose removing the existing second sentence of (d)(1)(i), since the requirement to identify eligible work would be included in proposed new paragraphs (d)(2) and (3). We propose moving the provision in existing paragraph (d)(1)(ii) into a new paragraph (d)(2), with certain revisions. Existing paragraph (d)(2) would be redesignated as paragraph (d)(4). New paragraph (d)(2) would provide that within 90 calendar days following FEMA’s approval of the Request for Public Assistance, the applicant must identify, and report all impacts the applicant proposes be included on the Project Applications. This would be a change from the existing deadline, which is 60 days following the first substantive meeting with FEMA. Basing the deadline on FEMA’s approval of the Request for Public Assistance avoids potential confusion about what constitutes the first substantive meeting. We propose increasing the time period from 60 days to 90 days, to ensure

applicants do not have less time to identify and report the impacts.<sup>30</sup>

We propose to add a new paragraph (d)(3), providing that for work not completed prior to or during the project development period, the applicant must conduct any site inspections necessary to validate incident impacts and obtain all information necessary to complete a detailed description of the impacts. This requirement is currently imposed in existing paragraph (d)(1)(ii), but the proposed change would improve clarity by better describing what is required. New paragraph (d)(3) would also require that within 30 calendar days following a site inspection or 120 calendar days following FEMA’s approval of the Request for Public Assistance, whichever is later, the applicant must also provide the recipient and FEMA all other documentation necessary to determine eligible work and costs. These deadlines would ensure that applicants timely submit all required information and support the efficient administration of the program. Applicants would be able to request an extension to the deadlines under section 206.202(f)(2), but if they fail to submit the documentation within the required time, the project would be ineligible, and the applicant would need to submit an appeal. When obligation and closeout of projects extends beyond the completion of the work, it delays the recovery process and results in undue burdens and increased costs for FEMA, recipients, and disaster-impacted communities. FEMA believes codifying a specific timeframe for submitting information is necessary to ensure timely completion of Project Worksheets, obligation of funds, and closure of projects.

Existing paragraph (d)(2) (proposed (d)(4)) provides information on the minimum threshold for small projects. When the estimated cost of a project is below this threshold, FEMA will not approve funding for it. Paragraph (d)(2) currently provides that the minimum threshold amount “shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers” (CPI-U). We propose updating the listed minimum threshold amount from \$3,000 to \$3,900 which is the current published amount.<sup>31</sup> We also propose to revise this paragraph to provide that the minimum threshold “will be reviewed annually and may be

adjusted . . . .” This is not a substantive revision, but simply clarifies that an adjustment to the minimum threshold is not strictly required every year. Sometimes, the change in CPI-U in a single year is so small as to only result in a de minimis change in the minimum threshold. FEMA interprets section 422 of the Stafford Act not to require the agency expend the time and resources necessary to issue an adjustment when the impact of that adjustment would be de minimis.

We further propose to revise current paragraph (d)(2) to change the way the minimum threshold is applied. Under the existing regulations, FEMA will not approve project applications when the estimated cost of work on the project is under the minimum threshold. FEMA requires applicants to restrict each project to a conceptual and logical grouping of eligible work at one or more sites.<sup>32</sup> Applicants have some discretion in how they group sites across projects, however, and some currently try to group together sites that are, by themselves, de minimis, in order to reach the minimum threshold. When projects consisting solely of multiple de minimis sites that should not have met the minimum threshold are processed, it takes up limited administrative resources and causes delays throughout the program. To remedy this, FEMA proposes to replace “when the estimated cost of work on a project” with “when the estimated cost of work at a site.” This would ensure the minimum threshold is applied not to the project as a whole, but to each site in the project individually, properly excluding project applications under the threshold.

We propose revising the heading of paragraph (e) from “grant approval” to “award notification” to better describe its provisions. We propose to make a number of clarifying revisions to paragraph (e)(1) to improve clarity and readability. Among them, we propose to revise the second sentence to replace the phrase “will obligate funds” with “may obligate funds.” This is not a substantive change, but merely a clarifying edit to more accurately reflect that, while in most cases the Regional Administrator will obligate funds after receiving the appropriate forms and approved Project Worksheets, there are occasionally situations that require a delay. For example, funding may not be available to obligate at the time the Project Worksheet is approved, FEMA may need to request additional information from the applicant, or an environmental review may be ongoing

<sup>29</sup> PAPPG at 37 (“Unless otherwise noted, FEMA calculates all deadlines based on calendar days”).

<sup>30</sup> Based on an analysis of data from FEMA’s Grants Manager system, it typically takes applicants approximately 78 days to complete this process. Accordingly, we do not expect this proposed deadline would impose a new burden on applicants.

<sup>31</sup> See 88 FR 72512 (Oct. 20, 2023).

<sup>32</sup> See 44 CFR 206.201; PAPPG at 60–63.

and need to conclude before funds can be obligated. In such situations, obligation is not automatic upon approval, but FEMA will obligate funds as soon as the relevant issue is resolved. We further propose to replace the term “Project Worksheet” with “Project Application,” consistent with the pending revision to FEMA’s Public Assistance forms.

We propose to remove existing paragraph (e)(2), which provides for a 45-day deadline for FEMA to obligate Federal funds, from the time the applicant submits the Project Worksheets. In the same way that there may be a delay as discussed above regarding paragraph (e)(1), circumstances may arise that require a delay before FEMA may obligate funds; to ensure we have the necessary flexibilities to maintain the smooth administration of the Public Assistance program, we propose to remove this deadline. Under this proposed change, FEMA would still maintain regular contact with applicants regarding the status of their projects and could explain any delays in obligation. We do not believe that removing the deadline will result in any substantial increase in delays or otherwise cause novel problems for applicants, but we request comment on the potential impact of this proposed change.

We propose to add a new paragraph (e)(2) providing that the recipient will notify the subrecipient of FEMA’s approval of a subaward. As discussed above, this provision is currently included in section 206.200(b)(2)(i), and we propose moving it to this section to improve organization and clarity in FEMA’s regulations.

In paragraph (f)(1)(i), we propose to clarify that a host State or Tribe that provides evacuation and sheltering support is eligible for a grant under sections 403 or 502 of the Stafford Act when an impacted State or Tribe requests direct Federal assistance for sheltering. Adding this statutory reference to “State/Tribe” would provide clarity to the reader and is a not a substantive change.

Overall, the proposed amendments to § 206.201 would streamline and improve the Project Worksheet process, which is a reform supported by the NAC in its recommendation.<sup>33</sup>

<sup>33</sup> See NAC Memo, Recommendations on the Stafford Act and Related Federal Regulations: Public Assistance and Individual Assistance Issues, at 2 (Aug. 19, 2008), available at [https://www.fema.gov/pdf/about/nac/hp/stafford\\_act\\_rec\\_081908.pdf](https://www.fema.gov/pdf/about/nac/hp/stafford_act_rec_081908.pdf).

#### iv. Section 206.203 Federal Grant Assistance

We propose to revise the heading of this section to read “Federal funding for large and small projects,” which adequately describes the contents of the section, as revised, and renders paragraph (a) unnecessary, and to remove paragraph (a). We proposed to redesignate paragraphs (b), (c)(1), (c)(2), and (c)(3) as paragraphs (a), (b), (c), and (d), respectively. We propose to move the provisions in existing paragraph (d), which address improved projects and alternate projects, to a new section 206.204, and accordingly redesignate existing sections 206.204–209 as sections 206.205–210, respectively.

In new paragraph (b), we propose to replace “State disaster assistance grants” with “FEMA Public Assistance awards.” In new paragraph (c), we propose stating that the minimum threshold amount will be “reviewed annually and may be adjusted” to reflect changes in CPI–U. This would more accurately reflect the fact that if the change in CPI–U for a given year is so small as to result in only a de minimis change in the minimum threshold, FEMA is not required to spend limited administrative resources issuing an adjustment that year. These revisions are merely clarifications and would not be a change in current agency practice.

In new paragraph (d), we propose minor edits to reflect the proposed reorganization of this section, replacing the reference to paragraph (c) with one to paragraphs (b) and (c), and to replace the term “Project Worksheet” with “Project Application,” consistent with FEMA’s pending update of its Public Assistance forms.

#### v. Proposed Section 206.204 Funding Options—Improved Projects and Alternate Projects

Existing section 206.203(d) addresses two funding options for projects that are outside the originally approved scope of work: (1) improved projects, which restore the predisaster function of a damaged facility but include improvements beyond the predisaster design, and (2) alternate projects, which are done when the public welfare would not be best served by restoring a damaged public facility or its function. FEMA proposes to create a new section 206.204 for these provisions, and to make revisions to the current regulatory language in existing section 206.203(d).

FEMA proposes to address improved projects, currently in section 206.203(d)(1), in new paragraph 206.204(a). We propose to add further information regarding project eligibility,

deadlines, and funding for improved projects in new paragraphs (a)(1) through (4). We propose to replace the words “Federal funding” with the words “Public Assistance funding” to more accurately reflect the source of the funds. Regarding project eligibility, we propose to add a sentence indicating that FEMA may only grant improved projects for permanent work.<sup>34</sup> This is not a new requirement, but the revision would help ensure clarity regarding eligibility for improved projects. Emergency work is meant to eliminate immediate threats to public safety and improved property, whereas an improved project is a project that restores the predisaster function of a facility and incorporates improvements or changes to the predisaster design. For example, an improved project would be a subrecipient contributing its own funding to add a new library when rebuilding a school.

The regulations at existing section 206.203(d)(1) require the subrecipient to obtain the recipient’s approval for improved projects. We propose to clarify in new section 206.204(a)(2) that the subrecipient must obtain the recipient’s approval in writing prior to the start of construction. Further, we propose to require that the recipient notify FEMA in writing of the improved project approval, which is consistent with current FEMA guidance on improved projects.<sup>35</sup> Having recipients notify FEMA of project approval helps ensure accountability and transparency by increasing communication between FEMA and recipients and providing consistent documentation.

FEMA also proposes to clarify in new paragraph 206.204(a)(3) that the project completion deadlines established under existing section 206.204(c) (proposed 206.205(c)) apply to the completion of improved projects and alternate projects. This is not a new requirement. Current section 206.204(c) establishes deadlines that apply to all projects approved under State disaster assistance grants. Including this requirement in the regulatory provisions that specifically address improved projects and alternate projects is intended to aid readers and FEMA in expediting project and program closure.

Regarding funding, FEMA proposes to clarify in new paragraph 206.204(a)(4) that Public Assistance funding for improved projects is either the Federal share of the actual costs of completing the improved project, or the Federal

<sup>34</sup> See definition of Permanent Work, 42 CFR 206.201, and discussion *supra* on proposed revision. See also PAPPG at 163.

<sup>35</sup> See PAPPG at 167.



share of the approved estimate of eligible costs, whichever is less. If, for example, a tornado destroys a school gym and the cost to replace that gym is approved for \$2 million, the school could apply that \$2 million toward the construction of a larger gymnasium, rather than replace a gymnasium of the same size. If it did, and the larger gymnasium cost \$5 million to build, FEMA would still calculate the Federal share from the \$2 million approved scope of work. If, however, the school rebuilt a smaller gym, and the actual cost was only \$1 million, FEMA would calculate the Federal share from the school's actual costs of \$1 million. These proposed changes are consistent with current FEMA guidance and would not substantively affect the amount of Federal share or the eligibility of costs for improved projects.<sup>36</sup>

FEMA proposes to move the provisions in existing section 206.203(d)(2), relating to alternate projects, to new section 206.204(b), and to clarify project eligibility, funding, and other requirements. In proposed paragraph (b)(4)(i), we propose to use the phrase "Public Assistance funding," instead of the phrase "Federal funding" used in existing 206.203(d)(2)(ii), to more accurately reflect the source of the funds. Regarding project eligibility, the current regulation states that the recipient may propose alternate projects in any case where a subrecipient determines that restoring a damaged public facility or the function of that facility would not best serve the public welfare. We propose to add PNP facilities to this provision. This is not a substantive change. PNP facilities are currently eligible for alternate project funding under existing section 206.203(d)(2)(iii), but they were inadvertently left out of the introductory language of existing paragraph (d)(2). FEMA also proposes to remove the language in existing section 206.203(d)(2)(i) stating that the "alternate project option may be taken only on permanent restorative work," and to instead state in proposed paragraph (b)(1) that "an alternate project may only be approved for permanent work." Because the language "permanent restorative work" may be misunderstood to limit the use of alternate projects funds to restoration work, FEMA is proposing this revision to clarify existing eligibility requirements and avoid confusion regarding the use of alternate project funds.

The current regulation, in section 206.203(d)(2)(v), requires the recipient

to submit a proposal for any alternate project to the Regional Administrator for approval before the start of construction. In addition to this requirement, we propose to further specify in new section 206.204(b)(2) that an applicant must receive approval from the Regional Administrator prior to the start of construction on an alternate project. This change would incorporate current policy<sup>37</sup> into the regulations and is intended to save applicants from beginning a project and committing their resources before learning that the project is ineligible for Public Assistance.

The current regulation also states that the recipient shall include a description of the proposed alternate project(s), a schedule of work, and the projected cost of the project(s) in the alternate project proposal. FEMA proposes to add that the schedule of work must include the starting date and targeted completion date because alternate projects tend to take a much longer time to complete than original or improved projects. Knowing the starting date and targeted completion date would enable FEMA to keep track of the project more effectively and aid FEMA in planning for closeout.

Additionally, existing section 206.203(d)(2)(v) further states that the recipient shall provide the necessary assurances to document compliance with special requirements, including, but not limited to, floodplain management, necessary environmental assessments, hazard mitigation, protection of wetlands, and insurance. FEMA proposes to simplify the regulatory language but slightly expand the scope of the provision by revising this list to read "any environmental or historic preservation issues, and any other legal considerations." We propose including this new language to require the recipient to identify other legal considerations not currently listed, such as liens on property, ownership issues, and zoning. See proposed 44 CFR 206.204(b)(2). Legal issues are more likely to arise in alternate projects than in original or improved projects, so identifying these issues early in the project formulation phase can assist FEMA in determining whether it should approve the project, or whether these issues will be prohibitive, thereby saving applicants from beginning a project only to be halted before completion.

In proposed section 206.204(b)(4), FEMA proposes to provide additional clarity regarding funding for alternate projects. Under the existing regulations,

at 206.203(d)(2), Public Assistance funding for alternate projects is limited to a certain percentage of the Federal share of FEMA's estimate of the cost of repairing, restoring, reconstructing, or replacing the original facility, and of management expenses. DRRRA section 1207(a) amended section 406(c) of the Stafford Act to remove these percentage limitations, so we propose to update the regulations to reflect the current statutory provision. We also propose to clarify that Public Assistance funding for alternate projects is limited to the Federal share of the actual costs of completing the alternate project or the Federal share of the approved estimate of the total eligible cost, whichever is less. This last change is not a substantive change, but simply intended to improve clarity and avoid confusion. Both changes are consistent with current FEMA guidance on alternate projects.<sup>38</sup>

Existing section 206.203(d)(2)(iv) states that funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. We propose to add, in proposed 206.204(b)(4)(ii), both the purchase of equipment and, when required to accomplish the project, the demolition of the original structure as eligible uses of alternate project funds. This change is consistent with current FEMA guidance on this issue,<sup>39</sup> and would improve clarity and consistency in the regulations.

Finally, we propose to add provisions to new paragraphs (b)(4)(ii)(A) and (B) regarding limitations on the use of funds for alternate projects. Funds awarded for alternate projects may not be used to pay the non-federal share of any project and may not be applied to operating expenses. These alternative project funds may not be applied in a regulatory floodway or for any uninsured public facility or private nonprofit facility located in a special flood hazard area. We also propose adding in new paragraphs (b)(4)(ii)(A) and (B) examples of work that alternative project funds may be used for. These examples are not an exhaustive list of permissible uses.

These limitations conform to the language of section 406(c)(1)(C) and (c)(2)(C) of the Stafford Act and current FEMA guidance,<sup>40</sup> and are proposed for clarity and to emphasize for readers the importance of these restrictions.

<sup>38</sup> See PAPPG at 164, 167–68.

<sup>39</sup> See PAPPG at 167.

<sup>40</sup> See PAPPG at 167–68.

<sup>36</sup> See PAPPG at 164, 166–67.

<sup>37</sup> See PAPPG at 167.

vi. Section 206.204 Project Performance (Proposed 206.205)

FEMA proposes to redesignate section 206.204 as section 206.205 to reflect the new section 206.204 discussed above.

In the chart in paragraph (c)(1), we propose replacing “debris clearance” with “debris removal” and “emergency work” with “emergency protective measures,” to improve clarity, consistent with the proposed removal of the definition of “emergency work” in section 206.201, discussed above. We further propose consolidating these two items onto a single line in the chart. Both have the same 6-month completion deadline, so combining them simplifies the chart and improves readability. We propose a conforming edit in paragraph (c)(2)(ii) to refer to “debris removal” and “emergency protective measures.”

Paragraph (c)(2) provides exceptions to the project completion deadlines established in paragraph (c)(1). Specifically, paragraph (c)(2)(i) states that the recipient may impose lesser deadlines for the completion of work if considered appropriate. Although deadlines shorter than those provided in paragraph (c)(1) are not often imposed, they may be appropriate in some circumstances. Under current practice, FEMA and the recipient will agree that a lesser timeline is appropriate in a particular case before any deadline(s) are reduced, and the recipient will inform the subrecipient of the reduced deadline, and then monitor and enforce the subrecipient’s compliance. FEMA proposes revising the existing language in paragraph (c)(2)(i), “The recipient may impose . . .”, to say “FEMA and the recipient may impose . . .” FEMA specifically requests comment on this proposed change and whether mandating concurrence on reduced deadlines would improve delivery of the Public Assistance program. Additionally, consistent with current guidance,<sup>41</sup> FEMA proposes clarifying in paragraph (c)(2)(ii) that all extensions of deadlines for temporary relocation require prior FEMA approval.

Paragraph (d) requires the recipient to submit requests for time extensions beyond the recipient’s authority to the Regional Administrator. FEMA proposes to clarify that the recipient must submit the request prior to the expiration of the last approved time extension, and that the recipient must provide the justification for the delay and projected completion date in writing. These revisions are consistent with current FEMA guidance and are not substantive policy changes.<sup>42</sup> FEMA also proposes

to require that the recipient base the justification for an extension under this paragraph on extenuating circumstances beyond the recipient’s and subrecipient’s control. This requirement is similar to the provision in paragraph (c)(2)(ii) requiring that an extension be based on extenuating circumstances or unusual project requirements beyond the control of the subrecipient and would better align these closely related provisions.

Also, in paragraph (d)(2), FEMA proposes to clarify that while FEMA will not provide Federal funding for a project if the work is not completed, FEMA may provide Federal funding for the completed portion of that project if the completed work is distinct from uncompleted work.

Existing paragraph (e)(2) describes how a subrecipient requests additional funding for a cost overrun and FEMA’s procedures for cost overruns for small projects. We propose to move the provisions relating to small projects to a new paragraph (e)(3) to more clearly differentiate between the treatment of large and small projects.

We propose to rewrite portions of paragraph (e)(2) to improve readability and to clarify that subrecipients may, but are not required to, submit requests for additional funding. These are non-substantive edits and only meant to improve clarity. We also propose to add a new sentence stating that subrecipients should make the request for additional funding as soon as practicable to give FEMA and the recipient an opportunity to inspect the uncompleted project to validate that the additional costs are eligible. The addition emphasizes the importance of timeliness in alerting the recipient and FEMA of potentially significant changes in eligible funding to allow time for the recipient or FEMA to make interim inspections of the projects, if necessary. Submitting requests as soon as practicable also protects the subrecipient by allowing for approval of reimbursement for the cost overruns before project closeout. Significant overruns that are not submitted until closeout of a project may be more difficult to justify, and the subrecipient may be severely impacted if the overruns are not approved.

The remainder of paragraph (e)(2) addresses cost overruns of small projects. We propose to include this language in new paragraph (e)(3) with one revision. We propose to specify that the subrecipient may submit a request for additional funding within 90 calendar days following the completion of the last small project, instead of an appeal in accordance with existing

section 206.206 within 60 days. Consistent with section 423 of the Stafford Act, 42 U.S.C. 5189a, appeals under existing section 206.206 are for decisions regarding eligibility, whereas cost overruns for small projects are financial reconciliation matters that should be handled following procedures related to payment of claims. This proposed revision would provide a deadline for handling cost overruns for small projects under these financial accounting procedures, separate from the formal appeal process under existing section 206.206. Subrecipients would still be able to submit an appeal if FEMA denies the request for additional funding, but proposed paragraph (e)(3) would not specifically reference appeals.

FEMA proposes to revise paragraph (f) to remove the statement that progress reports must describe the status of those projects on which a final payment of the Federal share has not been made to the recipient and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions. Since there may be projects that remain open after payment of the final Federal share has been made to the recipient, we propose rewording this requirement for clarity. For example, if FEMA has provided final payment to the recipient, but the recipient has not yet submitted payment to the subrecipient, the recipient would still be required to provide a progress report. FEMA proposes to revise paragraph (f) to instead state that progress reports must describe the status of open large projects. These amendments would align with current FEMA guidance on progress reports.<sup>43</sup>

vii. Section 206.205 Payment of Claims (Proposed 206.206)

Section 206.205(a) (proposed 206.206(a)) addresses small projects and currently provides that “Final payment of the Federal share of these projects will be made to the recipient upon approval of the Project Worksheet.” We propose to replace “Project Worksheet” with “Project Application,” consistent with the pending revision to FEMA’s Public Assistance forms, and to remove the word “final” out of recognition that FEMA may occasionally need to adjust funding after approval of the Project Application—for example, to account for a net small project overrun or actual insurance proceeds. Similarly, we propose specifying that recipients must make payment of the Federal share of

<sup>41</sup> See PAPPG at 133.

<sup>42</sup> See PAPPG at 196–97.

<sup>43</sup> See PAPPG at 193 (“FEMA requires the Recipient to report on the status of all open Large Projects on a quarterly basis.”).

small projects to the subrecipient as soon as practicable after Federal approval of funding “consistent with State or Tribal laws.” This is not a new requirement, and we only propose including this statement in the regulations to improve clarity. We also propose several non-substantive style edits to paragraph (a) to improve consistency and readability.

Paragraph (a) addresses small projects and currently requires the recipient to certify that all small projects were completed in accordance with FEMA approvals and that the contribution to the non-Federal share has been made to each subrecipient, if applicable. We propose revising paragraph (a) to add that the recipient must make this certification within 90 calendar days of the last approved small project completion date of record. This 90-day deadline is consistent with current Public Assistance program guidance on small projects,<sup>44</sup> and would provide recipients with a clear requirement for maintaining an efficient and timely administrative process. Currently, closeout sometimes extends significantly beyond the completion of the work, causing long administrative delays. FEMA believes imposing this deadline would allow recipients sufficient time to make the required certification, while also helping prevent undue delays and reducing burden on FEMA, but we request comment on the potential impact of this proposed change.

Paragraph (b) addresses large projects. Paragraph (b)(1) currently requires the recipient to submit an accounting to FEMA of each large project as soon as practicable after the subrecipient has completed the approved work and requested payment. We propose revising paragraph (b)(1) to require more specifically that the subrecipient submit a cost documentation for each large project to the recipient for final payment within 90 days of completion of the approved scope of work for that Project Application, and that the recipient submit the accounting for each large project to the Regional Administrator as soon as practicable, but not to exceed 90 calendar days after the subrecipient has submitted documentation for final payment. We also propose adding a new paragraph (b)(4) providing that the Regional Administrator could approve extensions when requested in writing by the recipient. Consistent with other requests for extensions, the recipient would be required to make these requests in advance of the initial deadline. As with the deadline

proposed in paragraph (a), FEMA believes these time constraints would reasonably balance the practical need to allow recipients and subrecipients sufficient time to submit the required documentation with FEMA’s interest in the efficient administration of the Public Assistance program. These deadlines would avoid lengthy delays by reducing the time it takes to close out projects. They would also require the recipient to make an accounting before documentation is irretrievable, which would improve accountability and transparency in program administration. The proposed 90-day timeframe is consistent with current Public Assistance program guidance.<sup>45</sup> We request comment on the potential impact of this proposed change.

The last sentence of paragraph (b)(2) currently states that if the Regional Administrator determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary. We propose to revise this sentence to state that if the Regional Administrator determines that eligible costs vary from the approved estimate, then he/she will adjust the funding (increase or decrease) to reflect the eligible actual costs, as necessary. This revision clarifies that the Regional Administrator does not just determine whether costs exceed the initial approval, which would require the obligation of additional funds. Rather, the Regional Administrator looks for any discrepancies between the approved and actual costs and will adjust funding as necessary, based on whether costs are more or less than the initial approval.

As explained above in reference to section 206.200, we propose to move the requirement in 206.200(b)(2)(ii), relating to the prompt payment of the Federal share to the subrecipient, into proposed 206.206. Specifically, we propose adding a new paragraph (b)(3) requiring that the recipient make payment of the Federal share to the subrecipient as soon as practicable after the Federal obligation of funding, consistent with State or Tribal laws. This is a non-substantive change that would simply reorganize and clarify an existing requirement and is consistent with the changes proposed in 206.205(a) (proposed 206.206(a)) discussed above.

viii. Section 206.206 Appeals (Proposed 206.207)

FEMA proposes no substantive changes to this section. The proposed rule would redesignate the section as 206.207, to account for proposed new section 206.204, and would revise the

cross references to the definitions in section 206.201 to reflect the proposed removal of the paragraph designations there.

ix. Section 206.207 Administrative and Audit Requirements (Proposed 206.208)

In section 206.207(a) (proposed 206.208(a)), we propose to remove the reference to 2 CFR part 3002, since that part now only references 2 CFR part 200, and instead simply refer directly to the applicable requirements of part 200. That part applies generally to Public Assistance awards except where inconsistent with the Stafford Act or FEMA’s regulations. We propose similar revisions in paragraphs (b)(1)(iii) (G)–(H) and (c)(1)–(2) to remove references to part 3002 and provide more specific citations to the audit requirements of part 200.

Section 324 of the Stafford Act authorizes FEMA to provide funding for management costs incurred in the administration of the Hazard Mitigation Grant Program and the Public Assistance program. Section 324 was implemented in FEMA’s regulations at 44 CFR part 207. Existing section 206.207(b)(1)(iii)(K) references these provisions, requiring State administrative plans to include procedures for determining the reasonable percentage or amount of pass-through funds for management costs provided under part 207. Section 1215 of DRRR amended section 324 of the Stafford Act to require FEMA provide funding for management costs at specific percentage rates for recipients and subrecipients. FEMA has implemented the DRRR section 1215 amendments via policy,<sup>46</sup> but new regulations have yet to be issued. Since recipients are no longer required to determine reasonable pass-through amounts, we propose removing the existing provision in paragraph (b)(1)(iii)(K) as it is no longer relevant to administrative plans.

We propose to revise paragraph (b)(1)(iii)(K) to require State/Tribal administrative plans to include procedures for ensuring timely closeout of subawards, subrecipients, and awards. Existing section 206.207 does not explicitly require administrative plans to include procedures for timely

<sup>46</sup> See Hazard Mitigation Grant Program Management Costs (Interim), FP 104–11–1 (Nov. 14, 2018), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_DRRR-1215-hazard-mitigation-grant-program-management-costs-interim-policy.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_DRRR-1215-hazard-mitigation-grant-program-management-costs-interim-policy.pdf); Public Assistance Management Costs (Interim), FP 104–11–2 (Nov. 14, 2018), available at [https://www.fema.gov/sites/default/files/2020-07/pa\\_management\\_costs\\_interim\\_policy.pdf](https://www.fema.gov/sites/default/files/2020-07/pa_management_costs_interim_policy.pdf).

<sup>44</sup> See PAPPG at 199–200.

<sup>45</sup> See PAPPG at 200.

closeout, but recipients are subject to the closeout requirements outlined in 2 CFR 200.344 and should already have such procedures in place. Timely closeout is consistently an issue when administering the Public Assistance program, and this proposed revision is intended to assist FEMA in expediting project and program closure.

Paragraph (b)(3) addresses submission and amendment of administrative plans. We propose to delete the first sentence of this paragraph, which refers to the 1989 deadline for submission of the first plan. Every State has submitted a first plan, so this language is now obsolete. We also propose revising the rest of existing paragraph (b)(3) to improve clarity, including to clarify that an administrative plan is required regardless of whether there is an emergency declaration or a major disaster declaration. This is a non-substantive change.

We propose one other change to paragraph (b)(3), relating to recipient staffing plans. Paragraph (b)(1)(ii) already requires recipients to prepare a staffing plan for administering the Public Assistance program as part of the State/Tribal administrative plan. We now propose to add a requirement that when a recipient prepares amendments to its State/Tribal administrative plan after a disaster, the amendments include a disaster-specific staffing plan. A staffing plan identifies all Public Assistance staffing functions, sources of staff to fill these functions, and the management and oversight responsibilities of each position. The staffing plan should identify the number of positions needed by each function for various size disasters and include procedures for determining staffing and budgeting requirements necessary for program management. Disaster-specific staffing plans should address changes in staffing requirements during a particular disaster, for example, when a joint field office is closed, and fewer staff are needed to administer the program. Each recipient would, therefore, have an overarching plan in place before disasters hit and would be able to refine any such plan to address the specific needs of a disaster once it occurs and throughout the response and recovery effort. Including a revised staffing plan when preparing amendments to the State/Tribal administrative plan would provide the opportunity to discuss and resolve any disagreements. This is particularly helpful if mutual aid for program management, through the Emergency Management Assistance Compact, is a possibility. FEMA's administrative plan template already includes a comprehensive staffing plan,

and that information is expected to be amended for each Federally declared emergency or major disaster declaration. These proposed changes are intended to improve administrative plans, which was a goal supported by the NAC in its recommendation.<sup>47</sup>

x. Section 206.208 Direct Federal Assistance (Proposed 206.209)

Section 206.208 (proposed 206.209) lays out FEMA's regulations relating to direct Federal assistance (DFA), which may be requested when a State or Tribal government lacks the capability to perform or to contract for eligible emergency protective measures or debris removal.

We propose to revise the first sentence in paragraph (a) of this section to remove the reference to local governments. Requests for DFA are made at the State or Tribal government level, so we propose this change to avoid confusion. We also propose to replace "emergency work and/or debris removal" with "emergency protective measures or debris removal." FEMA splits emergency work into two categories: debris removal and emergency protective measures. Current paragraph (a) is potentially confusing, as it refers to the both the broader term "emergency work" and the more specific term "debris removal." We propose this non-substantive revision to more accurately reflect the way FEMA categorizes emergency work.

Additionally, we propose expanding the statutory references in paragraph (a) to include Stafford Act sections 402, 418, 419, 502(a)(4) and (6), and 503. Section 402 covers general Federal assistance that FEMA may provide in a major disaster. Paragraph (a) currently references 402(1) and (4), but the proposed revision would expand the reference to section 402 as a whole. Sections 418 and 419 authorize the President to establish temporary communications systems and temporary public transportation. DFA is the only way to provide funds under sections 418 and 419 of the Stafford Act, so adding these two provisions clarifies the potential Federal role. Section 502 authorizes the President to direct any Federal agency to provide emergency assistance. Current paragraph (a) references 502(a)(1), (5), and (7), but the proposed revision would expand that to include 502(a)(4) and (6), which concern emergency assistance through

Federal agencies and assistance under Stafford Act section 408. Section 503 addresses the amount of assistance the President may provide for emergency assistance. These additions are a non-substantive change that would improve clarity for the reader and do not reflect a change in statutory authority.

We propose a few clarifying revisions to paragraph (b)(2). First, we propose replacing the words "statement as to the reasons" with "certification and explanation from" in order to more accurately reflect the form of a recipient's submission that it cannot perform or contract for performance of the requested work. Second, we propose to specify that this certification and explanation must come from the State or Indian Tribal government. Finally, we propose including Indian Tribal governments as one of the entities that must not be able to perform or contract for performance of the requested work. These are only revisions for clarity and would not represent substantive changes in policy.

We propose revising paragraph (c)(1) to replace the first instance of "Regional Administrator" with "FEMA." This revision would clarify that some requests for DFA may be approved by FEMA headquarters instead of by a Regional Administrator. We also propose clarifying that when FEMA (whether a Regional Administrator or headquarters) approves a request for DFA, FEMA may perform or contract for the work itself or will, as appropriate, issue a mission assignment to another Federal agency. This is not a substantive change in policy; because the current regulatory language does not make explicit that FEMA may handle the DFA work itself, we are proposing such an addition for clarity. Paragraph (c)(1) also incorrectly indicates that FEMA issues the mission assignment via a letter to the Federal agency performing the mission assignment. FEMA issues a mission assignment using various OMB-approved forms, not via a letter. Therefore, we propose to remove the reference to a mission assignment "letter." Although an actual letter is not used, the substance of the mission assignment remains the same. This is not a substantive change.

In paragraph (c)(2), we propose non-substantive edits to improve clarity, including the addition of the words "more specific" before "statutory authority of another Federal agency." The relevant restriction derives from appropriations law that prohibits augmentation of a Federal agency's purpose, *i.e.*, expanding into another Federal agency's jurisdiction or area of authority. FEMA characterizes this issue

<sup>47</sup> See NAC Memo, Recommendations on the Stafford Act and Related Federal Regulations: Public Assistance and Individual Assistance Issues, at 2 (Aug. 19, 2008), available at [https://www.fema.gov/pdf/about/nac/hp/stafford\\_act\\_rec\\_081908.pdf](https://www.fema.gov/pdf/about/nac/hp/stafford_act_rec_081908.pdf).

as “duplication of programs.” The proposed edit here is to improve clarity and is non-substantive.

In paragraph (d), we propose to clarify that the time limit for completion of work by a Federal agency under a mission assignment is 60 *calendar* days after the President’s declaration. The time limit has always been calculated using calendar days, but we propose making that explicit to improve clarity.

In paragraph (e), we propose only minor non-substantive edits.

xi. Section 206.209 Arbitration for Public Assistance Determinations Related to Hurricanes Katrina and Rita  
Hurricanes Katrina and Rita (Major Disaster Determinations DR–1603, DR–1604, DR–1605, DR–1606, and DR–1607) (Proposed 206.210)

FEMA proposes no substantive changes to this section. The proposed rule would redesignate the section as 206.210, update cross-references to other sections in part 206 consistent with the other changes proposed in this rule and replace the term “Project Worksheet” with “Project Application,” consistent with FEMA’s pending update of its Public Assistance forms.

*D. 44 CFR Part 206, Subpart H—Public Assistance Eligibility*

i. Section 206.220 General

FEMA proposes only non-substantive stylistic edits to this section to improve clarity.

ii. Section 206.221 Definitions

In section 206.221, FEMA proposes to remove the top-level paragraph designations in the section and reorder the definitions alphabetically.

FEMA proposes to add new definitions for the terms “assistance animal,” “household pet,” and “service animal.” These proposed definitions are currently used in FEMA’s Public Assistance guidance.<sup>48</sup> Their addition to section 206.221 is not intended to change their meaning, but simply to improve clarity and consistency in the regulations.

FEMA proposes to define “assistance animal” as an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates identified symptoms or effects of a person’s disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals. This definition is based on the definition found in U.S. Department of

Housing and Urban Development (HUD) guidance.<sup>49</sup>

FEMA proposes to define “household pet” as a domesticated animal that is traditionally kept in the home for personal rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes. This definition is based on HUD’s definition of household pets found in 24 CFR 5.306 and is consistent with FEMA’s current guidance.<sup>50</sup>

FEMA proposes to define “service animal” as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual’s disability. Our proposed definition of “service animal” is based on the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.*, and the U.S. Department of Justice’s implementing regulations at 28 CFR 36.104.

FEMA proposes to update the definition of “educational institution” by adding references to Title 20 of the U.S. Code. The references to the terms “elementary school,” “secondary school,” and “institution of higher education” have not been updated since FEMA promulgated 44 CFR 206.221 in 1990.<sup>51</sup> FEMA proposes to update the references to these terms to reflect where they are defined in current law. The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Public Law 114–95, defines the terms “elementary school” and “secondary school.” The Higher Education Act of 1965, as amended, defines the term “institution of higher education.” All three definitions are codified in Title 20 of the U.S. Code (currently found at 20 U.S.C. 7801(19), 7801(45), and 1001(a), respectively).

We also propose to clarify several definitions in this section. First, we propose to revise the definition of “immediate threat,” which is currently defined as the threat of additional

damage or destruction from an event that can reasonably be expected to occur within five years. The term “immediate threat” is used in the criteria that must be met for debris removal and emergency protective measures to be eligible for assistance. Some threats caused by a declared incident are threats in the context of some future incident, such as erosion to a beach creating the threat of damage to improved property in the event of flooding from a 5-year storm.<sup>52</sup> Other threats are more direct, such as broken tree limbs or branches that are overhanging improved property or public-use areas and creating the threat of injury or damage to improved property if they fall.<sup>53</sup> We propose revising this definition to better describe these two types of threats. We propose moving the existing definition to a new paragraph and revising it to clarify that the five-year period is from the date of the declared disaster and that, for flood incidents specifically, an immediate threat is a threat from a five-year flood (a flood that has a 20 percent chance of occurring in any given year). We also propose replacing the phrase “the threat of additional damage or destruction” in the existing definition with the phrase “the threat to lives or public health and safety, or of damage.” This change would clarify that the definition encompasses the full range of risks not just to improved property, but also to individuals and public health and safety that are at issue in debris removal and emergency protective measures determinations. We propose removing the word “destruction” because it is redundant with “damage,” and we propose removing the word “additional” to reflect that immediate threats may exist prior to any initial damage or destruction having occurred. In other words, reasonable expenses incurred in anticipation of and immediately preceding a declared incident may also be eligible. We propose adding a new paragraph covering the more direct type of immediate threats mentioned above. This new paragraph would provide that immediate threat includes an imminent danger requiring an urgent response to address serious risks to lives or public health and safety, or to avoid damage from an incident. These proposed revisions are consistent with FEMA’s guidance on this issue<sup>54</sup> and are only intended to clarify the regulations. We do not seek to make substantive changes to how we assess immediate threats for

<sup>49</sup> See HUD, Office of Fair Housing and Equal Opportunity, Notice FHEO–2020–01 (Jan. 28, 2020), available at <https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf>.

<sup>50</sup> See PAPP at 119.

<sup>51</sup> See 55 FR 2307 (Jan. 23, 1990).

<sup>52</sup> See PAPP at 104.

<sup>53</sup> See PAPP at 102.

<sup>54</sup> See PAPP at 97–139.

<sup>48</sup> See PAPP at 119.

the purposes of debris removal or emergency protective measures. We specifically request public comment on the proposed revisions to this definition and whether the new definition would accurately capture how the term is used in the Public Assistance program.

“Improved property” is currently defined as a structure, facility, or item of equipment which was built, constructed, or manufactured. The term “facility” is currently defined in section 206.201 as “any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature.” As discussed above, we propose to revise that definition by replacing the word “works” with “structure,” because the latter term is more commonly used in FEMA’s regulations and guidance. Accordingly, we propose to remove the word “structure” from the definition of “improved property” in section 206.221 as it would be redundant. Additionally, although the current definition of “improved property” encompasses facilities, and “facility” is defined in section 206.201 as including improved and maintained natural features, there has been confusion as to whether improved and maintained natural features are improved property. To address this confusion and make clear that improved property does include improved and maintained natural features, FEMA proposes to revise the definition of “improved property” to explicitly include improved and maintained natural features. The current definition also states that land used for agricultural purposes is not improved property. For clarity, we propose to add crops and livestock as examples of agricultural purposes.

In the definition of “private nonprofit facility” (existing paragraph (e)), the introductory text lists the types of eligible private nonprofit (PNP) facilities, and the succeeding paragraphs provide more detailed definitions for each type. We propose revisions to update the introductory text to reflect current statutory language in section 102(11)(A) of the Stafford Act, which provides a definition of PNP facility. First, both section 102(11)(A) and the paragraph defining “utility” (existing (e)(3)) include an item for irrigation facilities, but they were inadvertently omitted from the list in the introductory text to the regulatory definition. We propose to correct this oversight and add irrigation facilities to this list. This is a technical, non-substantive change.

Second, we propose to add “rehabilitational” to the introductory text and add a new paragraph defining

“rehabilitational facility.” This term has been in section 102 since 1988,<sup>55</sup> but was inadvertently omitted from the introductory text and paragraphs here. We propose to define “rehabilitational facility” as a facility that provides alcohol and drug treatment and other rehabilitational services. FEMA intends for this definition to clarify the distinction between this term and the separate term “rehabilitation facility,” which is used in the paragraph definitions of “medical facility” and “essential social service facility.” While the latter term refers to more traditionally medical-focused treatment of injury or disease, a “rehabilitational facility” as proposed to be defined offers treatment of substance use disorders and related services. This proposed definition would not represent a substantive policy change or alter FEMA’s implementation of section 102(11)(A) of the Stafford Act. FEMA is proposing it to ensure consistency between the statute and regulations and improve clarity for the public.

Third, we propose to add “center-based childcare” to the proposed introductory text and add a new paragraph defining “center-based childcare.” Section 1238(b) of DRRRA amended section 102(11)(A) of the Stafford Act to add “center-based childcare” to the definition of “private nonprofit facility.” Our proposed additions in the definition would implement this statutory change. In the proposed paragraph, we would define “center-based childcare” as a private nonprofit facility that the State or Tribal Department of Children and Family Services, Department of Human Services, or similar agency, recognizes as a licensed childcare facility. This definition is consistent with FEMA’s current guidance on childcare facilities,<sup>56</sup> and does not represent a substantive policy change.

Fourth, we propose to revise the introductory text to the definition to reflect changes in the Bipartisan Budget Act of 2018. Section 20604(a) of the Bipartisan Budget Act of 2018 amended section 102(11)(A) of the Stafford Act to provide that the definition of PNP facilities includes educational facilities without regard to the religious character of the facility and amended section 102(11)(B) to replace the term “essential services of a governmental nature” with the term “essential social services.” To incorporate these amendments in FEMA’s regulations, we propose revising the introductory text to the definition to replace “educational” with

“educational (without regard to the religious character of the facility)” and to replace “essential governmental type services” with “essential social services.” FEMA proposes the change from “essential governmental type services” to “essential social services” to conform FEMA’s regulations with the current statutory text. This change would not represent a substantive change in policy.<sup>57</sup>

The fifth revision we propose within the introductory text to the definition of “private nonprofit facility” is to remove the term “aged and disabled” and replace it with “older adults and persons living with disabilities.” Terminology has changed since the original drafting of § 206.221 and FEMA proposes this change to align with more updated terminology. This change would not represent a substantive change in policy.

The last revision we propose to the introductory text to the definition of “private nonprofit facility” is to remove the words “and such facilities on Indian reservations” and “Further definition is as follows” from the end. The reference to facilities on Indian reservations has no practical impact on facility eligibility and causes confusion. Section 102(11)(A) of the Stafford Act, 42 U.S.C. 5122(11)(A), includes in the definition of “private nonprofit facility” a category for facilities on reservations, to be defined in regulation. However, neither the existing nor proposed regulations include a definition for facilities on reservations. As such, only the specific facility types named in the definition (existing paragraph (e)) are eligible, and they are eligible regardless of whether they are located on a reservation. We propose removing the reference to facilities on Indian reservations to avoid confusion. This revision would not change which facilities are eligible. Similarly, the mention of “further definition” in the last sentence is unnecessary, and we propose to remove it to simplify the paragraph and improve clarity.

The paragraph defining “educational facilities” to the definition of “private nonprofit facility” (existing (e)(1)), currently states that they are classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes. We propose to explicitly limit this definition to PNP facilities, for the sake of clarity, and to explicitly include in the definition “related buildings.” FEMA has found that many educational

<sup>55</sup> See Public Law 100–707, 102 Stat. 4689, 4690.

<sup>56</sup> See PAPPG at 48.

<sup>57</sup> 42 U.S.C. 5122(11)(B).

facilities have buildings that may contain support functions in addition to classrooms, for example, dormitories. These buildings may be essential to the provision of the school's educational services, but the current regulation is not clear as to their eligibility. We propose to clarify that related buildings are indeed eligible, consistent with current FEMA practice and guidance.<sup>58</sup> This proposed revision is not substantive. Also, in this paragraph, we propose to remove the word "machinery" as it is already encompassed by the word "equipment," which immediately precedes it. This is a non-substantive change intended to simplify the provision and prevent confusion. Further, we propose to remove from this paragraph the exclusion of buildings, structures, and related items used primarily for religious purposes or instruction. Consistent with the proposed revisions to the introductory text in the proposed definition, this proposed change would reflect the amendments to the Stafford Act in section 20604(a) of the Bipartisan Budget Act of 2018, which specifically provided that an educational facility could qualify as a PNP facility regardless of its religious character.

In the proposed edits to the paragraph defining "utility" (existing (e)(2)), we propose to explicitly limit the application of the definition to PNP facilities, for the sake of clarity, and to further clarify that PNP irrigation facilities are not considered "utilities" under this paragraph. This is to avoid any possible confusion that such facilities are also considered utilities. Instead, a proposed paragraph (existing (e)(3)) would separately define PNP irrigation facilities.

In the proposed paragraph defining "medical facility" (existing (e)(5)), we propose to make a technical correction to the citation. The current citation, 42 U.S.C. 2910, should be 42 U.S.C. 2910.

In the proposed paragraph defining "essential social service facility" (existing (e)(7)), we propose a number of revisions. First, we propose to revise the defined term "other essential governmental service facility" to "essential social service facility." Section 20604(a) of the Bipartisan Budget Act of 2018 amended section 102(11)(B) of the Stafford Act to redefine this term, and this revision would update FEMA's regulations to reflect that. Section 20604(a) also added "houses of worship" to the list of eligible PNP facilities, and we accordingly propose to add "house of worship" to the list of eligible PNP

facilities in the proposed paragraph. Second, we propose adding the words "a private nonprofit facility" to explicitly limit this definition to PNP facilities, for the sake of clarity. Third, we propose adding performing arts facilities and community arts centers as eligible PNP facilities. Section 688 of PKEMRA amended section 102 of the Stafford Act to add performing arts facilities and community arts centers as eligible PNP facilities, and this revision would update FEMA's regulations to reflect that. Fourth, we propose adding food banks as eligible PNP facilities. Section 1214 of the DRRM amended section 102 of the Stafford Act to include food banks as eligible PNP facilities, and this revision would update FEMA's regulations to reflect that. Fifth, we propose adding broadcasting facilities as eligible PNP facilities. Section 2(a) of the Emergency Information Improvement Act of 2015 amended section 102 of the Stafford Act to include broadcasting facilities as eligible PNP facilities and this revision would update FEMA's regulations to reflect that. The proposed revisions would reflect the current statutory language, which provides that these categories of PNP are eligible to receive PA funding, and are consistent with current FEMA guidance.<sup>59</sup> Under this proposed rule, the paragraph would list the following facility types: museums, zoos, performing arts facilities, community arts centers, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, food banks, broadcasting facilities, houses of worship, and facilities that provide health and safety services of a governmental nature.<sup>60</sup>

We further propose revising the last sentence of the paragraph defining "essential social service facility" to replace "All such facilities must be open to the general public" with "such a facility must provide essential social services to the general public." This revision would better align FEMA's regulations with the language of the Stafford Act, as amended by section 20604(a) of the Bipartisan Budget Act of 2018 and improve clarity. Section 102(11)(B) of the Stafford Act requires that facilities provide essential social services to the general public in order to qualify as eligible PNP facilities under

the statute, and also provides that houses of worship may not be excluded from the definition of PNP facility on the grounds that leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice. As currently written, one could interpret the last sentence to require that PNPs allow members of the public open access to their facilities or not restrict leadership or membership, instead of simply providing services to the public. The proposed revision to this sentence would avoid that potential confusion and ensure that it is interpreted consistently with the statutory requirements.

Next, FEMA proposes to revise the definition of "private nonprofit organization." In proposed paragraph (1) in the definition (existing (f)(1)), FEMA proposes to update the outdated reference to the Internal Revenue Code of 1954. The current authority is the Internal Revenue Code of 1986, as amended. This revision is also proposed in section 206.2 under the definition of "private nonprofit organization." In proposed paragraph (2) (existing (f)(2)), FEMA proposes to remove the words "nonrevenue producing" and add a reference to Tribal law to make the definition consistent with section 206.2(a)(19)(ii). The definitions should be uniform, and FEMA currently applies the definition as it appears in section 206.2.<sup>61</sup> Lastly, we propose to add new paragraph (3) to allow private nonprofit organizations that are exempt from the requirements to apply for Internal Revenue Code section 501(c)(3) status or applicable State or Tribal tax exempt status to establish their status through (1) articles of association, bylaws, or other organizing documents indicating that it is an organized entity and (2) a certification that it is compliant with section 501(c)(3) of the Internal Revenue Code and State or Tribal law requirements. Consistent with the addition proposed in section 206.2(a)(19)(iii), discussed above, this proposed addition is meant to ease the burden for certain private nonprofit organizations that are not able to establish their nonprofit status under proposed paragraphs (1) or (2).

Finally, eligibility for Public Assistance is dependent on the existence of an eligible facility, but the agency recognizes that care for vulnerable populations such as those for

<sup>59</sup> See PAPPG at 43, 46.

<sup>60</sup> "Shelter workshop" and "senior citizen centers" are the terms used in section 102 of the Stafford Act, 42 U.S.C. 5122(11)(B), but other facilities providing services for individuals with disabilities and/or older adults may qualify for assistance if they meet the standards for one of the other facility types. See PAPPG at 43–47.

<sup>61</sup> FEMA proposes maintaining this definition in both sections to improve readability. Section 206.221 includes several provisions regarding PNPs and including the definition there would help avoid confusion and the need to cross-reference section 206.2.

<sup>58</sup> See PAPPG at 45.

older adults and persons with disabilities, has evolved since the original drafting of FEMA's regulations. FEMA seeks comment on whether its definition of "private nonprofit facility" is sufficiently broad to encompass all private nonprofit organizations providing service to older adults and persons with disabilities that are eligible to receive public assistance under the Stafford Act. Stakeholders should identify gaps that might be addressed if FEMA offered further amendment to the definition of "private nonprofit facility" in the final rule.

### iii. Section 206.222 Applicant Eligibility

Section 206.222 lists the entities that are eligible to apply for Public Assistance through the recipient. We propose to revise paragraph (c) to replace "Indian tribes" with "Indian Tribal governments," for consistency with the definition at 44 CFR 206.201 and the Stafford Act. Neither this nor the other changes proposed in this section are substantive.

### iv. Section 206.223 General Work Eligibility

Section 206.223 describes general work eligibility. Paragraph (a) lists general eligibility requirements for an item of work. We propose to revise paragraph (a)(2) to clarify that emergency operation center activities are eligible even if they are located outside of the designated area. It is FEMA's practice to allow for emergency operations center activity<sup>62</sup> under paragraph (a)(2), and the change would simply update the regulatory text for clarity and consistency.

Paragraph (b) specifically addresses PNP facilities. For work on PNP facilities to be eligible for financial assistance, an organization meeting the definition of a "private nonprofit organization" in section 206.221 must own or operate the PNP facility. FEMA proposes to rewrite paragraph (b) to improve clarity for the reader. Additionally, these edits would correct the language that says facilities must be owned "and" operated to read owned "or" operated, in conformance with 44 CFR 206.222(b) and FEMA's application of the requirement.

FEMA proposes to consolidate paragraphs (c) and (d) into a revised paragraph (c) titled "*Rural community, unincorporated town or village, or other public entity facilities.*" Section 102(8)(C) of the Stafford Act provides that the term "local government" includes "a rural community,

unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State." Section 206.223(c) properly reflects that facilities owned or operated by public entities are eligible for financial assistance, but paragraph (d) only discusses facilities serving a rural community or unincorporated town or village that are owned by a PNP. While it is correct that work performed on PNP facilities may be eligible, this is already addressed by paragraph (b) and confuses what are separate issues. Facilities serving a rural community or unincorporated town or village are also eligible if they are the legal responsibility of the rural community or unincorporated town or village itself. To improve clarity, we propose revising paragraph (c) to cover rural communities, unincorporated towns or villages, and other public entities together, consistent with the statutory language.

Per the above changes, existing paragraph (e) would be redesignated paragraph (d), and FEMA further proposes to add a new paragraph (e) addressing duplication of benefits. This new paragraph would describe the recipient's and subrecipient's obligations to notify FEMA of available benefits and to pursue recovery of available benefits, and would reiterate that FEMA will disallow or recoup duplicate benefits. We propose adding this new paragraph (e) to improve usability for readers and emphasize these requirements in the relevant section of the regulations. Nothing in proposed paragraph (e) is a new requirement. The provision is based on section 312(c) of the Stafford Act, which requires FEMA to recover other assistance that is available. For example, if a recipient or subrecipient did not receive insurance proceeds because they did not present the claims or assert the legal rights, FEMA would deduct the value of those unasserted rights to insurance proceeds from the Public Assistance grant amount.

### v. Section 206.224 Debris Removal

In paragraphs (a) and (b), we propose to make non-substantive stylistic edits to make the provisions easier to understand. The proposed edits would not change the meaning of these paragraphs.

We also propose to revise paragraph (a)(4) to provide that the Regional Administrator must approve extensions of the two-year deadline to complete debris removal under the terms of that paragraph, instead of the Assistant Administrator for the Disaster

Assistance Directorate (now the Recovery Directorate). FEMA believes the Regional Administrator is best positioned to determine whether an extension is appropriate, and that approval at the Assistant Administrator level is not necessary in this situation. The delay and administrative burden of a lengthier review process, which is required for approval by the Assistant Director, outweigh any marginal benefit it may have.

### vi. Section 206.225 Emergency Work

FEMA proposes to revise the heading of this section from "Emergency work" to "Emergency protective measures." FEMA splits emergency work into two categories: debris removal and emergency protective measures. Currently, the heading of sections 206.224 and 206.225 are confusing as both concern emergency work, but only section 206.225 is entitled "emergency work." We propose to revise the heading of this section to more accurately reflect the way FEMA categorizes emergency work. Similarly, in paragraph (a)(2), we propose to replace "emergency work" with "emergency protective measures." These are non-substantive changes intended to improve clarity.

Also, in paragraph (a)(2), we propose replacing "cope with" with "eliminate, lessen, or avert," and in paragraph (a)(3) we propose adding "avert" to "eliminate" and "lessen." "Avert" is used in the current definition of "emergency work" in 206.201, as well as in section 502 of the Stafford Act. These proposed changes in paragraph (a) are non-substantive and would simply ensure clear, consistent language throughout part 206.

In paragraph (a)(3)(ii), we propose to remove the word "additional." Emergency protective measures authorized under section 403 or 502 of the Stafford Act include work that eliminates, lessens, or averts immediate threats of significant damage to improved public or private facilities. The Stafford Act does not limit emergency protective measures to "additional" damage to improved facilities. That is, FEMA does not currently limit emergency work to "additional" damage, and FEMA reimburses emergency protective measures that protect a facility prior to damage. For example, emergency protective measures such as sandbagging, bracing/shoring structures, and construction of temporary levees are eligible for reimbursement. Removal of the word "additional" is a non-substantive change.

<sup>62</sup> See PAPPG at 52.



FEMA proposes to revise paragraphs (c) and (d) to clarify that pursuant to these provisions FEMA provides emergency communications and emergency public transportation in the form of direct Federal assistance. In paragraph (c), this new language would replace the existing statement about establishing and making emergency communications available to State and local government officials. Although this current language is a reasonably accurate description of the DFA process, FEMA believes it could be better worded to improve clarity. FEMA therefore proposes to explicitly describe this assistance as DFA. The proposed revision would not change how FEMA provides emergency communications or other types of DFA. Likewise, under section 206.225(a), emergency communications and emergency public transportation are only eligible to save lives, to protect public health and safety, and to protect improved property. Once those needs have been met, funding is discontinued. As there is no need to restate this requirement in paragraphs (c) and (d), FEMA proposes to remove the relevant sentence from each paragraph for clarity.

Additionally, FEMA proposes to add specific mention of appropriate auxiliary aids and services where necessary for effective communication and paratransit services for individuals with disabilities to paragraphs (c) and (d). FEMA currently provides DFA for these services,<sup>63</sup> and this proposed revision would not change that, but simply improve clarity and highlight to the reader the availability of this assistance, consistent with FEMA's obligation to provide accessible disaster assistance.<sup>64</sup>

FEMA proposes to add a new paragraph (e) to address the rescue, care, shelter, and essential needs of household pets, service animals, and assistance animals. Section 689(b) of PKEMRA and section 4 of the PETS Act amended section 403(a) of the Stafford Act to include as essential assistance the rescue, care, shelter, and essential needs of individuals with household pets and service animals and of such pets and animals. With the change to FEMA's statutory authority, the costs recipients and subrecipients expend to rescue, shelter, care for, and provide essential needs for household pets and service animals are reimbursable, and we therefore propose updating section 206.225 accordingly. Consistent with FEMA guidance on this issue,<sup>65</sup>

proposed paragraph (e) includes "assistance animals," since animals meeting the definition of that term proposed in section 206.221 would fall within the scope of section 403(a) of the Stafford Act.<sup>66</sup>

FEMA proposes to add a new paragraph (f) to address the provision of temporary relocation facilities for essential community services, which is authorized by section 403(a)(3)(D) of the Stafford Act. As a result of a disaster, essential community services provided at public and PNP facilities may be disrupted to the extent that they cannot continue unless they are relocated to another facility. An applicant may request reimbursement for the reasonable costs for temporary facilities so that it can continue to provide its essential community services. Consistent with current FEMA guidance, paragraph (f) would define "essential community services" as those services performed by governmental entities or private nonprofit organizations that are necessary to save lives, protect and preserve property or public health and safety, or preserve the proper function and health of the community at large.<sup>67</sup> Proposed paragraph (f) would also include a non-exhaustive illustrative list of specific essential community services as previously provided in guidance. The temporary relocation provision in section 403(a)(3)(D) of the Stafford Act is not new and FEMA's administration of temporary relocation assistance is not changing; the proposed addition of paragraph (f) would simply provide additional information in the regulations to improve clarity and usability.

#### vii. Section 206.226 Restoration of Damaged Facilities

FEMA proposes to revise the introductory text in this section by adding a parenthetical after "restore" that reads "(repair, reconstruct, or replace)," which more clearly reflects the scope of projects that are eligible for Public Assistance funding under section 406 of the Stafford Act. We also propose revising this sentence to clarify that the restoration of facilities must be on the basis of their "pre-disaster design," consistent with the term used in the definition in section 206.201. This is not a substantive change.

To improve clarity and readability, we propose to reorganize the paragraphs in this section to be in alphabetical order.

<sup>66</sup> 42 U.S.C. 5170b(a)(3)(J)(ii) refers to "such pets and animals," indicating that household pets and service and assistance animals are contemplated within our statutory authority.

<sup>67</sup> See PAPPG at 130.

We propose to remove existing paragraphs (a)(2) and (3), which allow public elementary and secondary school facilities to receive assistance under the Stafford Act even though they may be otherwise eligible for assistance from the U.S. Department of Education. The exception was added on October 25, 1993, to provide an exception to FEMA's general practice of deferring to the authority of another Federal agency when both FEMA and the other agency have authority to grant assistance in response to a declared major disaster.<sup>68</sup> The change eliminated the overlap of FEMA and the U.S. Department of Education programs and any confusion resulting from that overlap. Due to changes made by the No Child Left Behind Act of 2001, 20 U.S.C. 6301, the U.S. Department of Education no longer has the authority to assist elementary and secondary schools in response to a disaster. Therefore, the exception is no longer necessary, and these paragraphs are no longer applicable. Removing these paragraphs is not a substantive change. FEMA will continue to provide assistance to public and eligible PNP elementary and secondary school facilities as otherwise authorized by 44 CFR part 206.

In proposed paragraph (c) (existing (d)), we propose revising the heading to read "Codes and standards," consistent with the other edits to this paragraph, discussed below. We also propose conforming edits elsewhere in the paragraph to change "standards" to "codes and standards." We also propose designating the introductory text as paragraph (c)(2), adding a new paragraph (c)(1), and redesignating the remaining paragraphs accordingly.

Section 1235(b) of DRRRA amended section 406(e) of the Stafford Act to require FEMA to fund repair, restoration, reconstruction, or replacement in conformity with "the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant design and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities . . . ." We propose to codify this requirement in our regulations in proposed paragraph (c)(1). Per the proposed revision to the definition of "facility" in section 206.201, the proposed language in proposed section 206.226(c)(1) does not include the word "structure." FEMA has issued interim guidance on DRRRA section 1235(b),

<sup>68</sup> Disaster Assistance; Public Elementary and Secondary School Facilities Final Rule, 58 FR 55021 (Oct. 25, 1993).

<sup>63</sup> See PAPPG at 114.

<sup>64</sup> See 42 U.S.C. 5151, 29 U.S.C. 794.

<sup>65</sup> See PAPPG at 119.

which defines the framework for consistent and appropriate implementation of this consensus-based codes, specifications, and standards requirement,<sup>69</sup> and this proposed addition to the regulations would not displace that guidance. The framework and details provided there would continue to apply; this proposed rule would simply incorporate the basic statutory requirement into the regulations. We also propose revising new paragraph (c)(2) (existing (d)) to provide that the costs of restoration under other Federal, State, Tribal, and local codes and standards are still eligible, provided that they (1) are at least as stringent as the applicable code or standard established in new paragraph (c)(1), and (2) meet the existing requirements being retained in proposed paragraphs (c)(2)(i)–(v). This proposed revision would ensure that the new DRRRA-mandated consensus-based codes and standards apply, but also allow for the funding of projects under other codes and standards that meet or exceed that minimum. This proposed revision is consistent with FEMA’s guidance on DRRRA section 1235(b).<sup>70</sup>

In proposed paragraph (c)(2)(i) (existing (d)(1)), we propose removing “repair,” since it is redundant with “restoration.” This is consistent with the proposed revision to the introductory text of section 206.226, discussed above. We also propose removing the undesignated parenthetical between paragraphs (c)(2)(i) and (ii) (existing (d)(1) and (2)), which explains that standards may be different for new construction than for repair work. Removing this language would not be a substantive change, but simply improve the readability and clarity of the regulations; paragraph (c)(2)(i) would already make clear that different types of restoration may have different applicable codes and standards, so the parenthetical is redundant, and its location in the paragraph may cause confusion. In addition, we propose to remove existing paragraph (d)(3)(ii), which addresses standards for State governments until January 1, 2000, and local governments until January 1, 1999. This paragraph is no longer necessary because these dates have passed.

We propose to add a new paragraph (d) to address disaster damage. The requirement that, to be eligible for

restoration under section 206.226, damage must be the result of a major disaster is a fundamental requirement of section 406 of the Stafford Act. Deterioration, loss of useful life, or aging of a facility are not damage caused by a disaster, and therefore do not qualify for Public Assistance funding. This proposed addition would emphasize the disaster damage requirement and improve clarity in the regulations.

Proposed paragraph (f) (existing (e)) addresses hazard mitigation and states that, in approving grant assistance for restoration of facilities, the Regional Administrator may require cost-effective hazard mitigation measures not required by applicable standards. Although it has been FEMA’s policy to consider hazard mitigation measures when evaluating projects for Public Assistance grants,<sup>71</sup> FEMA proposes to add language clarifying that recipients and subrecipients may request cost-effective hazard mitigation measures when seeking grant assistance for the restoration of facilities to underscore the importance of hazard mitigation in the recovery from a disaster. In recognition that there are some projects in which hazard mitigation is not appropriate, or that some measures may not be cost-effective, the Regional Administrator must consider, but is not required to approve, all proposals for hazard mitigation.

Proposed paragraph (i) (existing (c)) lists the critical services that eligible PNP facilities must provide in order to be eligible for Public Assistance funding for permanent work without applying for a loan from the U.S. Small Business Administration. Section 689h of PKEMRA amended section 406(a)(3)(B) of the Stafford Act to include education as a critical service. To implement this new statutory authority, FEMA proposes to add “education” to this list of critical services. Similarly, the Emergency Information Improvement Act of 2015, Public Law 114–111, amended the list of critical services in section 406(a)(3)(B) of the Stafford Act to replace “communications” with “communications (including broadcast and telecommunications)”. FEMA proposes to make this same change to the list of critical services in this paragraph. FEMA also proposes to revise paragraphs (i)(1) and (2) (existing (c)(1) and (2)) to remove unnecessary cross-references and improve clarity and readability; these changes would not alter the current PNP eligibility requirements.

Proposed paragraph (j) (existing (g)) addresses approval of funding for

relocation. Existing paragraph (g)(1) currently states that the Regional Administrator may approve funding for and require restoration of a destroyed facility at a new location when the facility is and will be subject to repetitive heavy damage, the approval is not barred by other provisions in 44 CFR, and the overall project, including all costs, is cost-effective. FEMA proposes three clarifying, non-substantive edits to proposed paragraph (j)(1).

First, we propose replacing the phrase “a destroyed facility” with “a damaged facility that is not repairable, per paragraph (k)(1) of this section.” Under proposed paragraph (k)(1) (existing (f)(1)), if the cost to repair a damaged facility exceeds 50 percent of the cost to replace the facility, it is considered not repairable. Damaged facilities that are not destroyed but that are not repairable are treated the same as destroyed facilities with respect to relocation assistance. The proposed change would make clear that the Regional Administrator may approve funding for and require relocation of these damaged, not repairable facilities. The proposed change would not affect the eligibility of destroyed facilities. Destroyed facilities are considered not repairable and would continue to be eligible for relocation assistance if the other requirements of proposed paragraph (j) are met.

Second, FEMA proposes to revise proposed paragraph (j)(1)(ii) to clarify that FEMA regulation or applicable statutory requirements must not bar relocation approval. Adherence to applicable statutory requirements is necessary even if those requirements are not explicitly invoked in FEMA regulations in Title 44 CFR.

Third, we propose to remove the words “including all costs” from proposed paragraph (j)(1)(iii). In determining the cost-effectiveness of relocation, it is not necessary to include every cost and it is unlikely that all costs will be known at the time the cost-effectiveness determination is made. FEMA considers the larger context of the requested relocation when determining cost-effectiveness, such as whether the applicant provides an essential community service that should be relocated. The regulatory text should not suggest the burden for establishing cost-effectiveness is higher than it is. This proposed revision is consistent with FEMA’s current guidance on relocation.<sup>72</sup>

<sup>72</sup> See PAPPG at 160 (“If the cost to relocate the facility is less than the eligible cost to replace the facility at its original location . . . then the project

<sup>69</sup> Consensus-Based Codes, Specifications and Standards for Public Assistance, FEMA Recovery Interim Policy FP–104–009–11 Ver. 2.1 (Dec. 20, 2019), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_DRRRA-1235b-public-assistance-codes-standards-interim-policy.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_DRRRA-1235b-public-assistance-codes-standards-interim-policy.pdf).

<sup>70</sup> See *Id.* at 4.

<sup>71</sup> See PAPPG at 153.

In proposed paragraph (j)(2), we propose to clarify that when relocation is required by the Regional Administrator, it is “the construction of” ancillary facilities such as roads and utilities that is eligible.

Existing paragraph (g)(3) states that, when relocation is required by the Regional Administrator, no future funding for repair or replacement of a facility at the original site will be approved. We propose to clarify that the funding referred to is FEMA funding. We also propose to replace the reference to 44 CFR part 9 with a reference to 44 CFR part 80. Part 80, added to the CFR in 2007,<sup>73</sup> consolidated FEMA’s procedures and requirements for the acquisition of property for open space and expanded the scope of the prior regulations to address the use of all types of mitigation funds.

In proposed paragraph (j)(4), we propose to remove the 90 percent limit on eligible costs for alternate projects to reflect section 1207(a) of DRRRA, which amended section 406(c) of the Stafford Act to remove the 90 percent Federal cost share limit for alternate projects. This proposed revision would incorporate the statutory change without alteration. Also, in proposed paragraph (j)(4), we propose clarifying that if the actual project costs for an alternate project are less than the estimated costs, only the actual costs will be eligible for funding. This is not a substantive policy change; we would simply be making this limitation explicit.<sup>74</sup>

Lastly, in proposed paragraph (j)(5), we propose to remove an outdated reference to 44 CFR part 10, which was removed in 2016.<sup>75</sup> When considering the environmental planning and historic preservation impacts of providing funding for projects under the Public Assistance program, FEMA now uses DHS Instruction Manual 023–01–001–1, Revision 01, and Directive 023–01, Implementation of the National Environmental Policy Act, and FEMA Directive 108–1 and Instruction 108–1–1, Environmental Planning and Historic Preservation Responsibilities and Program Requirements, instead of 44 CFR part 10.

is cost effective. In instances where the cost of relocation exceeds the cost to replace the facility at its original location FEMA may . . . determine cost effectiveness.”).

<sup>73</sup> See Flood Mitigation Grants and Hazard Mitigation Planning, 72 FR 61720 (Oct. 31, 2007) (interim final rule); see also Flood Mitigation Grants and Hazard Mitigation Planning, 74 FR 47471 (Sept. 16, 2009) (final rule).

<sup>74</sup> See PAPPG at 164.

<sup>75</sup> See Removal of Environmental Considerations Regulations, 81 FR 56514 (Aug. 22, 2016).

Proposed paragraph (k) (existing (f)) addresses when a facility should be repaired versus replaced. Existing paragraph (f)(1) states in part that “[a] facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition.” We propose to replace the words “disaster damages do” with “the estimated repair cost for disaster damage does.” This is a more accurate statement since it is the costs of repair rather than the damage incurred that is considered when determining whether a facility is repairable. This change would not substantively alter the requirements of this paragraph. Instead, it is simply intended to improve clarity. Similarly, we propose replacing the words “predisaster condition” with “predisaster design and function.” This latter term is used more often in FEMA’s guidance on repair and replacement,<sup>76</sup> and would improve clarity and consistency; it would not be a substantive change. We also propose replacing the second occurrence of the words “a facility” with “the facility” to avoid confusion. This would not be a substantive change.

Finally, in proposed paragraph (l)(1) (existing (k)(1)), we propose to change the subheading from “Alternative use facilities” to “Converted facilities” in order to avoid confusion with “alternate projects,” which are addressed in another section of this subpart. We also propose to reword the text to clarify the limitations of eligibility for converted facilities. When a facility is being used for an alternate use at the time of the disaster, it is eligible for restoration either to the alternate use or to the original use, whichever is less. For example, a school being used as a hospital at the time of the disaster would be reimbursed for eligible costs to restore the facility to a school, or a hospital, whichever is less. This is detailed in FEMA’s current guidance,<sup>77</sup> but the regulatory language in existing paragraph (k)(1) does not make this clear, so we propose to revise the text to improve clarity and consistency.

As clarified in the preceding paragraph, FEMA currently considers eligible the lesser of the cost to restore a converted facility to its immediate predisaster use or its original use. FEMA requests comment on whether to amend its regulations to allow reimbursement in some or all cases for the cost of restoring the facility to its original design or to the design for the purpose the facility was being used prior to the

disaster, regardless of the lesser cost. FEMA seeks feedback on how best to balance supporting community-driven recovery and responsible stewardship of taxpayer funds and whether there are specific criteria FEMA should consider when evaluating converted facilities projects.

We also propose non-substantive grammatical edits to proposed paragraph (l)(2) (existing (k)(2)) to refer to “facility” in the singular instead of the plural, to match the usage in proposed paragraph (l)(1) (existing (k)(1)).

#### viii. Section 206.227 Snow Assistance

We propose to revise section 206.227 by replacing the word “snowstorms” with “snowfall” to clarify that FEMA’s assessment of record or near-record conditions for the purposes of snow assistance is based on the amount of snow that falls. This change is non-substantive, but would improve clarity and make the language in section 206.227 consistent with the language used in FEMA’s guidance on snow assistance.<sup>78</sup>

#### ix. Section 206.228 Allowable Costs

We propose to revise the introductory text in section 206.228 to clarify the applicability of different authorities to the Public Assistance program. While 2 CFR part 200 provides basic requirements for allowable costs for all Federal awards, the Public Assistance program is limited to the assistance authorized and other requirements imposed by the Stafford Act.<sup>79</sup> Part 200 therefore applies only to the extent that it does not conflict with the more specific statutory provisions, or with FEMA’s implementation of those provisions in regulation and guidance. The revised language does not represent a substantive policy change with respect to allowable costs but is simply intended to more accurately describe the interplay between these different authorities.

We propose to replace paragraph (a) with paragraph (a)(1) and to redesignate the remaining paragraphs accordingly. The heading of new paragraph (a) would be revised to read “Eligible Force Account Equipment Costs,” to more accurately describe its contents.

We also propose to remove paragraph (a)(2)(ii) to remove the provision on debris removal work for major disasters and emergencies declared in response to

<sup>78</sup> See PAPPG at 238.

<sup>79</sup> See also 2 CFR 200.420 (“In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs”).

<sup>76</sup> See PAPPG at 157, 217.

<sup>77</sup> PAPPG at 140.

Hurricane Sandy. This provision is out of date and no longer needed.

We propose to add a new paragraph 206.228(b)(2) incorporating the Public Assistance alternative procedures pilot program for debris removal. The Sandy Recovery Improvement Act of 2013 amended the Stafford Act to add section 428, which, *inter alia*, authorized alternative procedures for debris removal under the Public Assistance program.<sup>80</sup> It also authorized FEMA to implement the alternative procedures through a pilot program. FEMA established a pilot program that applied to debris removal in all major disasters and emergencies declared on or after June 28, 2013, and has repeatedly revised the pilot program since then.<sup>81</sup> Under normal procedures for emergency work, only overtime labor is eligible for budgeted employees, while straight and overtime labor are eligible for unbudgeted employees.<sup>82</sup> Under the alternative procedures, as currently implemented in FEMA guidance, applicants can opt to participate in the straight-time procedure for debris removal, where straight-time labor costs are eligible for budgeted employees conducting Category A debris removal activities.<sup>83</sup> Proposed new paragraph 206.228(b)(2) would incorporate this policy into FEMA's regulations.

The Sandy Recovery Improvement Act of 2013 also amended section 403 of the Stafford Act to provide for the eligibility of straight-time for force account labor for state and local employees conducting emergency protective measures, where the work is

not typically performed by the employees and it is the type of work that might otherwise be carried out by contract.<sup>84</sup> We request comment on whether FEMA should incorporate that change in its regulations. In addition, we request comment on a provision to make straight-time labor costs eligible for permanently employed health care personnel reassigned or redeployed to perform eligible healthcare work for any major disaster or emergency declared by the President on or after March 13, 2020, in response to the COVID-19 pandemic. In light of the widespread impact of the pandemic and its continued impact on State and local governments, we seek feedback from the public on whether such a provision would promote efficient and timely recovery.

Existing paragraph (a)(3) provides that administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207. We propose removing paragraph (a)(3) to avoid confusion. Part 207 was first published in 2007<sup>85</sup> and implemented section 324 of the Stafford Act, which authorizes FEMA to provide funding for management costs incurred in the administration of the Hazard Mitigation Grant Program and the Public Assistance program. Section 1215 of DRRRA amended section 324 of the Stafford Act to require FEMA provide funding for management costs at specific percentage rates. As a result of this amendment, the existing part 207 regulations are no longer current. FEMA has implemented the DRRRA section 1215 amendments via policy,<sup>86</sup> but FEMA has not yet issued new regulations. As such, the reference to part 207 in paragraph (a)(3) may cause confusion, and we propose to remove it. This removal would not change the current calculation or funding of management costs and future revisions to part 207 would still apply even without the specific cross-reference here. This proposed change would help simply to improve clarity.

<sup>80</sup> See Public Law 113–2, 1102, 127 Stat. 39, 39–42.

<sup>81</sup> See FEMA, Archives: Public Assistance Alternative Procedures (PAAP), <https://www.fema.gov/assistance/public/policy-guidance-fact-sheets/public-assistance-alternative-procedures-paap-archives> (last accessed June 12, 2024).

<sup>82</sup> 42 U.S.C. 5170b(d)(1)(B); 44 CFR 206.228(a)(2)(iii) (proposed 206.228(b)(3)).

<sup>83</sup> See PAPPG at 101. When FEMA first issued guidance on the alternative procedures, it provided for a variety of alternatives, including, for example, recycling revenues and an increased Federal cost share for accelerated removal. See PAAP Alternative Procedures Pilot Program Guide for Debris Removal, ver. 1 (June 28, 2013), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_PAAP-debris-removal-guide-V1\\_2013.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_PAAP-debris-removal-guide-V1_2013.pdf). Over the years, as FEMA revised the guidance, various provisions were removed for being ineffective or underutilized, and by 2019, when FEMA issued version 7 of the guidance, it only included the straight time force account labor provision. See PAAP Alternative Procedures Pilot Program Guide for Debris Removal, ver. 7 (June 28, 2019), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_PAAP-debris-removal-guide-V7\\_6-28-2019.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_PAAP-debris-removal-guide-V7_6-28-2019.pdf). In 2020, this guidance was incorporated into FEMA's comprehensive Public Assistance program guidance, the PAPPG, retaining only this straight time force account labor provision. See PAPPG at 101.

<sup>84</sup> See Public Law 113–2, 1108, 127 Stat. 39, 47.

<sup>85</sup> See Management Costs, 72 FR 57875 (Oct. 11, 2007).

<sup>86</sup> See Hazard Mitigation Grant Program Management Costs (Interim), FP 104–11–1 (Nov. 14, 2018), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_DRRRA-1215-hazard-mitigation-grant-program-management-costs-interim-policy.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_DRRRA-1215-hazard-mitigation-grant-program-management-costs-interim-policy.pdf); Public Assistance Management Costs (Interim), FP 104–11–2 (Nov. 14, 2018), available at [https://www.fema.gov/sites/default/files/2020-07/pa\\_management\\_costs\\_interim\\_policy.pdf](https://www.fema.gov/sites/default/files/2020-07/pa_management_costs_interim_policy.pdf).

*E. 44 CFR Part 206, Subpart K—Community Disaster Loans*

The Disaster Relief Act of 1974 (Pub. L. 93–288) authorized FEMA's Community Disaster Loan (CDL) program, which is currently codified in Section 417 of the Stafford Act, 42 U.S.C. 5184. The CDL program provides funding for local governments to operate their essential community services after substantial revenue loss caused by a disaster.<sup>87</sup>

#### i. Section 206.361 Loan Program

Section 608 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, amended section 417(b) of the Stafford Act by increasing the amount that communities may receive in a CDL. It now allows communities to receive up to 50 percent of their annual operating budgets (not to exceed \$5 million) if they suffered a loss of tax or other revenue equal to or greater than 75 percent of their annual operating budgets for the fiscal year in which the disaster occurred. We propose to revise paragraph (b) accordingly.

#### ii. Section 206.363 Eligibility Criteria

We propose to remove the words “or emergency” from paragraph (b)(1). Section 417(a) of the Stafford Act authorizes CDLs only under major disaster declarations, and FEMA only makes CDLs in such cases; however, paragraph (b)(1) erroneously refers to major disasters and emergencies. This revision would make clear that CDLs are not authorized for emergency declarations, consistent with the Stafford Act.

#### iii. Section 206.364 Loan Application

Consistent with the proposed edit to section 206.361, we propose to revise paragraph 206.364(d)(1)(ii) to reflect that, per section 608 of the SAFE Port Act, communities may now receive CDLs of up to 50 percent of their annual operating budgets (not to exceed \$5 million) if they suffered a loss of tax or other revenue equal to or greater than 75 percent of their annual operating budgets for the fiscal year in which the disaster occurred. Additionally, we propose a non-substantive revision to paragraph (c)(2) to clarify that the deadline to submit a revised loan application is sixty “calendar days” from the date of the initial disapproval.

<sup>87</sup> FEMA's website provides more information on CDLs at <https://www.fema.gov/assistance/public/nonstate-nonprofit/community-disaster-loan> (last accessed June 12, 2024).

**IV. Regulatory Analysis**

*A. Executive Order 12866, as Amended, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review, Executive Order 14094 Modernizing Regulatory Analysis*

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory 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.

The Office of Management and Budget (OMB) has designated this proposed rule a “significant regulatory action” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1). Accordingly, the rule has been reviewed by OMB.

This analysis provides a summary of the potential costs, benefits, and transfer payments for the Public Assistance program update Notice of Proposed Rulemaking (NPRM) under the criteria of Executive Orders 12866, 13563, and 14094. The full Regulatory Impact Analysis (RIA) for this proposed rule is included in the docket for this NPRM.

FEMA proposes to revise its PA and CDL programs regulation to reflect current statutory authorities, agency practice, and implement program

improvements. The proposed rule would incorporate changes brought about by amendments to the Stafford Act. FEMA is also proposing clarifications and corrections to the Public Assistance program. FEMA previously implemented many of the changes limiting the practical effects of this rule. The primary purpose of this rule would be to codify these changes to improve efficiency and consistency of information for the Programs. The following Table 1 summarizes the proposed changes of this rule and their impacts as measured against a no-action baseline (*i.e.*, what the world would look like absent the rule) and Table 2 summarizes the changes and their impacts as measured against a pre-statutory baseline (*i.e.*, what the world would look like without the statutory changes or FEMA’s implementing guidance).

**TABLE 1—SUMMARY OF THE IMPACTS FOR THE PROPOSED CHANGES, NO-ACTION BASELINE, 2020–2029 [2019\$]**

Category	Summary
Changes .....	Codify availability of assistance for the rescue, care, shelter and essential needs of household pets and service animals. Codify expansion of PA eligibility for certain types of private nonprofits (PNPs): rehabilitational facilities, community and performing arts facilities, broadcasting facilities, food banks, houses of worship, and center-based childcare facilities. Codify expanding CDL percentage to 50 percent under certain conditions while maintaining \$5 million maximum loan cap. Codify alternative procedures for debris removal. Codify the alternate project funding Federal cost share caps. Codify consensus-based codes and standards requirement for PA funded projects. Proposed requirement for applicants to identify any legal considerations for alternate projects. Proposed requirement that State and Tribal Administrative Plans include an outline for timely closeout of project and disaster specific staffing plans. Proposed setting of submission dates for certain work documentation required for PA projects. Non-substantive changes and clarifications to improve the efficiency and consistency of the PA program.
Affected Population .....	Applicants eligible to request a Federal major disaster declaration authorizing PA, including 56 State and Territorial governments, 574 Federally recognized Indian Tribal governments, local governments, and certain private nonprofit organizations.
Transfer Payments from FEMA to Applicants ....	Under a no-action baseline, there are no transfer payments to report.
Costs (quantitative) .....	For the no-action baseline, the total 10-year costs to Applicants and FEMA discounted at 3 percent and 7 percent, respectively, is \$251,270 and \$216,272. The annualized cost is \$29,457 and \$30,792 at the 3 and 7 percent discount rates.
Benefits (quantitative) .....	FEMA is unable to estimate quantitative benefits.
Benefits (qualitative) .....	Codifying already implemented changes would improve clarity and align FEMA regulations with statutory changes and current practices and procedures. Identifying legal considerations early in the applications process would allow for more complete project application review for alternate projects. Adding submission deadlines for work documentation would increase clarity and add more time early in the application process for work documentation. Keeping administrative plans up-to-date and providing additional staffing information about prior disasters would help recipients be in a better position to respond to and recover from emergencies and disasters.

TABLE 2—SUMMARY OF THE IMPACTS FOR CHANGES, PRE-STATUTORY BASELINE, 2000–2029  
[2019\$]

Category	Summary
Changes .....	<p>Amends availability of assistance for the rescue, care, shelter and essential needs of household pets and service animals.</p> <p>Amends PA eligibility for certain types of private nonprofits (PNPs): rehabilitational facilities, community and performing arts facilities, broadcasting facilities, food banks, houses of worship, and center-based childcare facilities.</p> <p>Amends CDL percentage to 50 percent under certain conditions while maintaining \$5 million maximum loan cap.</p> <p>Amends alternative procedures for debris removal.</p> <p>Amends the alternate project funding Federal cost share caps.</p> <p>Amends consensus-based codes and standards requirement for PA funded projects.</p> <p>Proposed requirement for applicants to identify any legal considerations for alternate projects.</p> <p>Proposed requirement that State and Tribal Administrative Plans include an outline for timely closeout of project and disaster specific staffing plans.</p> <p>Proposed setting of submission dates for certain work documentation required for PA projects.</p> <p>Non-substantive changes and clarifications to improve the efficiency and consistency of the PA program.</p>
Affected Population .....	<p>Applicants eligible to request a Federal major disaster declaration authorizing PA, including 56 State and Territorial governments, 574 Federally recognized Indian Tribal governments, local governments, and certain private nonprofit organizations.</p>
Transfer Payments from FEMA to Applicants ....	<p>Under a pre-statutory baseline, the net increase in 10-year total transfer payments discounted at 3 and 7 percent, respectively, is \$50,762,154 and \$41,796,443. The net increase in annualized transfer payment is \$5,950,873 at the 3 and 7 percent discount rates.</p>
Costs (quantitative) .....	<p>Under the pre-statutory baseline, the total 10-year costs to Applicants and FEMA discounted at 3 percent and 7 percent, respectively, is \$70,957,558 and \$58,434,274. The annualized cost is \$8,318,390 and \$8,319,726 at the 3 and 7 percent discount rates.</p>
Benefits (quantitative) .....	<p>FEMA is unable to estimate quantitative benefits.</p>
Benefits (qualitative) .....	<p>Expands PA eligibility for certain PNPs allowing FEMA to consistently provide additional assistance to such PNPs to allow them to recover more quickly from disaster-damage.</p> <p>Improving clarity and aligning FEMA regulations with statutory changes and current practices and procedures.</p> <p>Increasing recipient flexibility when determining whether the community would benefit more from facility restoration or an alternate project.</p> <p>Promotes resiliency and reduces future damage risk of repaired facilities with consensus-based codes and standards requirement for PA funded projects.</p> <p>Increasing flexibility for debris removal projects by allowing FEMA to reimburse base and overtime wages for the employees of State, Tribal, or local governments.</p> <p>Identifying legal considerations early in the applications process would allow for more complete project application review for alternate projects.</p> <p>Increases clarity and adds more time early in the application process for work documentation.</p> <p>Keeping administrative plans up-to-date and providing additional staffing information about prior disasters would help recipients be in a better position to respond to and recover from emergencies and disasters.</p>

Need for Regulation

FEMA proposes to revise its PA and CDL program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Stafford Act<sup>88</sup> to the PA and CDL

<sup>88</sup> Several Federal statutes have amended sections of the Stafford Act relating to Public Assistance and Community Disaster Loans. These include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), 6 U.S.C. 701 *et seq.*, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster

programs. FEMA proposes to amend its PA and CDL program regulations to incorporate these statutory changes and to improve program administration. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the PA program. FEMA previously implemented many of the changes through guidance, limiting the practical effects of this rule. The primary purpose of this rule would be to codify these changes to improve efficiency and consistency of information for the program.

FEMA addresses the substantive changes in this analysis and presents how they affect costs, benefits, and transfer payments. The remaining changes would be non-substantive,

Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438.

meaning they are technical and include definitional updates and other changes that modernize and standardize regulations, reduce redundancy, or increase readability. The non-substantive changes do not have an economic impact. FEMA included a detailed marginal analysis table in Appendix A of the separate Regulatory Impact Analysis that summarizes changes listed in the NPRM and the related impacts.

Affected Population

The proposed rule would affect all potential applicants for Federal assistance under the PA and CDL programs. Eligible applicants for PA include 56 State and Territorial governments, 574 Federally recognized Tribal governments, local governments,

and certain PNPs.<sup>89</sup> Based on data from 2010 to 2019, the PA program as a whole obligated an average amount of \$5.6 billion (in 2019 dollars) across 28,721 projects per year. For PNP entities specifically, the PA program obligated an average amount of \$454.7 million (in 2019 dollars) per year across 2,070 projects from 2010 to 2019.

Under the PA program, FEMA awards grants to help communities quickly respond to and recover from Presidentially-declared emergencies and major disasters. Generally, the State, Territory, or the District of Columbia for which the emergency or major disaster is declared is the recipient. Federally recognized Indian Tribal governments may apply for Public Assistance directly and be classified as a recipient.<sup>90</sup> The applicant is a State, Tribal, or Territorial agency, local government, or eligible private nonprofit organization

submitting an application to the recipient for assistance under the recipient's grant. Upon award, the recipient notifies the applicant of the award, and the applicant becomes a subrecipient.

**Baseline**

Following guidance in OMB Circular A-4, FEMA assessed each impact of this rule against a pre-statutory and no-action baseline. The pre-statutory baseline is what the world would be like if the relevant statute(s) had not been adopted and implemented through guidance. Accordingly, measuring the proposed rule against a pre-statutory baseline shows the effects of the proposed rule as compared to FEMA practice prior to the enactment of the enabling statute or guidance (*i.e.*, as if FEMA had not already implemented the statutory or policy changes.) A no-action

baseline is an assessment of the way the world would look absent the proposed action. Accordingly, measuring the proposed rule against a no-action baseline shows the effects of the proposed rule as compared to current FEMA practice (*i.e.*, compared to FEMA guidance, which reflects FEMA's current practice).

The proposed rule under a no-action baseline would have monetary costs and qualitative benefits. Under a pre-statutory baseline, the proposed rule would have distributional transfer payments, monetary costs, opportunity costs, and qualitative benefits. Table 3 shows the undiscounted annual effects of this proposed rule under a no-action baseline. Table 4 shows the undiscounted annual effects of this proposed rule under a pre-statutory baseline.

**TABLE 3—AVERAGE ANNUAL EFFECTS OF PROPOSED RULE, FUTURE 10-YEAR PERIOD, NO-ACTION BASELINE [2019\$]**

Change No.	Change	Year implemented	Costs	Benefits	Transfers from FEMA to recipients
1	Rehabilitational Facilities	1988	\$0	Qualitative	\$0
2	Pets and Service Animals	2006	0		0
3	Community and Performing Arts	2007	0		0
4	CDL Program	2012	0		0
5	Debris Removal Pilot	2013	0		0
6	Broadcasting Facilities	2015	0		0
7	Food Banks	2017	0		0
8	Houses of Worship	2017	0		0
9	Alternate Project Funding	2017	0		0
10	Center-Based Childcare Facilities	2018	0		0
11	Codes and Standards	2019	0		0
12	Alt Projects Legal Considerations	New	1,434		0
13	State and Tribal Admin Plans*	New	22,138		0
14	Work Documentation	New	0		0
	Familiarization*		4,926		0
	Annual Increase		28,498		0
	Annual Decrease		0		0
	<b>Total</b>		<b>28,498</b>	<b>Qualitative</b>	<b>0</b>

\* For consistency in the table, this cost is displayed as an annual average over ten years. Familiarization cost would be a one-time cost in the first year of \$49,264. Change 13 has a cost of \$40,250 in the first year and \$20,125 in subsequent years.

**TABLE 4—AVERAGE ANNUAL EFFECTS OF PROPOSED RULE, FUTURE 10-YEAR PERIOD, PRE-STATUTORY BASELINE [2019\$]**

Change No.	Change	Year implemented	Costs	Benefits	Transfers from FEMA to recipients
1	Rehabilitational Facilities	1988	\$10,890	Qualitative	\$1,126,114
2	Pets and Service Animals	2006	3,496		590,464
3	Community and Performing Arts	2007	1,485		224,514
4	CDL Program	2012	0		0
5	Debris Removal Pilot	2013	0		-7,373,048
6	Broadcasting Facilities	2015	1,485		344,235
7	Food Banks	2017	0		0
8	Houses of Worship	2017	76,725		2,121,795
9	Alternate Project Funding	2017	0		2,524,814
10	Center-Based Childcare Facilities	2018	0		0
11	Codes and Standards	2019	8,194,853		6,391,985
12	Alt Project Legal Considerations	New	1,434		0
13	State and Tribal Admin Plans*	New	22,138		0

<sup>89</sup> A list of the 574 Tribal entities can be found at: Indian Entities Recognized by and Eligible To

Receive Services From the United States Bureau of Indian Affairs, 88 FR 2112 (Jan. 12, 2023).

<sup>90</sup>FEMA Tribal Policy (Rev. 2). FEMA. [https://www.fema.gov/sites/default/files/documents/fema\\_tribal-policy.pdf](https://www.fema.gov/sites/default/files/documents/fema_tribal-policy.pdf). Dec. 18, 2020.

TABLE 4—AVERAGE ANNUAL EFFECTS OF PROPOSED RULE, FUTURE 10-YEAR PERIOD, PRE-STATUTORY BASELINE—  
Continued  
[2019\$]

Change No.	Change	Year implemented	Costs	Benefits	Transfers from FEMA to recipients
14 .....	Work Documentation .....	New	0		0
	Familiarization * .....		4,926		0
	Annual Increase .....		8,317,432		13,323,921
	Annual Decrease .....		0		-7,373,048
	Total (Net) .....		8,317,432		Qualitative .....

\* For consistency in the table, these costs are displayed as an annual average over ten years. Familiarization would be a one-time cost in the first year of \$49,216. Change 13 has a cost of \$40,250 in the first year and \$20,125 in subsequent years.

Costs

No-Action Baseline

FEMA estimates the total average undiscounted cost for this proposed rule, as measured against a no-action baseline, to be \$28,498 per year over a future ten-year period. Changes 1 through 11 would not result in any additional costs, as measured against the no-action baseline, because FEMA has already implemented them through guidance and proposes to codify these changes through this rule. The proposed rule under a no-action baseline would result in additional costs due to Change 12: Alternate Project Legal Considerations (recipient costs of \$1,434) and Change 13: State and Tribal Admin Plans (recipient costs of \$40,250 in the first year and \$20,125 in the subsequent years). Changes 12 and 13, and their estimated impacts, are described in more detail in the Pre-Statutory Baseline section below.

The proposed regulation would also result in familiarization costs. FEMA assumed a State Government Chief Executive, a senior level government official, or an individual in an equivalent occupation would read the proposed regulations to understand the changes. FEMA obtained the wage rate of \$52.83 for a State Government Chief

Executive from BLS OES data.<sup>91</sup> To account for employee benefits, FEMA multiplied the base hourly wage rate by a load factor of 1.6 to find a loaded hourly wage rate of \$84.53 (\$52.83 hourly mean wage for Chief Executives × 1.6 wage rate multiplier).<sup>92</sup> FEMA used 93 respondents (56 States territories + 37 Tribes acting as recipients)<sup>93</sup> in the estimate as this is the level from which a PA disaster declaration request is made. FEMA assumed there would be 112 Chief Executives that review the proposed changes, two from each State. FEMA also assumed there would be 74 Chief Executives that review the proposed changes, two from each Tribe. This means that there are a total of 186 (112 + 74) Chief Executives. FEMA assumed the States regularly update their emergency response networks and local emergency management divisions on changes in the field and the States would disseminate the regulatory changes through each State’s respective process. As of the time of this analysis, there are approximately 47,000 words in the NPRM document for this rule. Although FEMA could not identify formal studies on the subject, some reports suggest that, on average, a person reads about 250 words per minute, though there can be variation

according to individual attributes and type of material being read.<sup>94</sup> Based on the word count at the time of this analysis, it would thus take about 3.1333 (47,000 words ÷ 250 words per minute ÷ 60 minutes per hour) hours to read the rule. At the burdened wage for Chief Executives, this would be about \$264.86 (\$84.53 × 3.1333 hours) per review. The total familiarization cost would be about \$49,264 (186 respondents × \$264.86), which would potentially be incurred during the first year the rule is effective.

Under a no-action baseline, FEMA estimates the total annual cost undiscounted would be \$90,948 (\$1,434 + \$40,250 + \$49,264) for only the first year. The first year includes the calculations for familiarization costs as well as costs due to Change 12: Alternate Project Legal Considerations and Change 13: State and Tribal Admin Plans. Then the total annual cost undiscounted would be \$21,559 (\$1,434 + \$20,125) for each year after that. The discounted total net 10-year cost at 3 percent and 7 percent, respectively, would be \$251,270 and \$216,272. The annualized cost would be \$29,457 and \$30,792 at the 3 and 7 percent discount rates (Table 5).

<sup>91</sup> BLS OES, May 2019, NAICS code 999200, State Government, Standard Occupational Code 11–1011 for Chief Executives, mean wage. [https://www.bls.gov/oes/2019/may/naics4\\_999200.htm](https://www.bls.gov/oes/2019/may/naics4_999200.htm).

<sup>92</sup> Fully loaded wage rates include other benefits, we are using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for costs to the employer for benefits, such as paid leave, health insurance, retirement, and other benefits. Bureau of Labor Statistics. Employer Costs for Employee Compensation, Table 1. “Employer costs For Employee Compensation by ownership, March 2019.” [http://www.bls.gov/news.release/archives/ecec\\_06182019.pdf](http://www.bls.gov/news.release/archives/ecec_06182019.pdf). June 18, 2019.

The wage multiplier is calculated by dividing total compensation for State and local government workers of \$50.89 by Wages and salaries for State and local government workers of \$31.75 per hour yielding a benefits multiplier of approximately 1.6 (\$50.89 ÷ \$31.75).

<sup>93</sup> 56 States includes 50 states and 6 territories: the District of Columbia, and territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands. FEMA’s annual estimate of 37 Tribes was based on the number of Tribes acting as recipients historically.

<sup>94</sup> The benchmark of 250 words per minute applies to most adults, according to several reports.

See, e.g., HealthGuidance.org, What Is the Average Reading Speed and the Best Rate of Reading?, <https://www.healthguidance.org/entry/13263/1/what-is-the-average-reading-speed-and-the-best-rate-of-reading.html>, (last accessed June 12, 2024); ExecuRead, Speed Reading Facts, <https://secure.execuread.com/facts/>, (last accessed June 12, 2024). It is noted that the reading of technical material can be slower than other types of documents. Because this document is technical in some ways, the actual review time might be higher, thus resulting in higher familiarization costs than reported herein.



TABLE 5—SUMMARY OF NO-ACTION BASELINE COSTS, FUTURE 10-YEAR PERIOD  
[2019\$]

Year	FEMA costs	Recipient costs	Total costs undiscounted	Annual costs discounted at 3%	Annual costs discounted at 7%
2020	\$0	\$90,948	\$90,948	\$88,299	\$84,998
2021	0	21,559	21,559	20,321	18,830
2022	0	21,559	21,559	19,730	17,599
2023	0	21,559	21,559	19,155	16,447
2024	0	21,559	21,559	18,597	15,371
2025	0	21,559	21,559	18,055	14,366
2026	0	21,559	21,559	17,529	13,426
2027	0	21,559	21,559	17,019	12,548
2028	0	21,559	21,559	16,523	11,727
2029	0	21,559	21,559	16,042	10,960
Total	0	284,979	284,979	251,270	216,272
Annualized				29,457	30,792

Pre-Statutory Baseline

The proposed rule, under a pre-statutory baseline, would result in additional costs for Change 1: Rehabilitational Facilities; Change 2: Pets and Service Animals; Change 3: Community and Performing Arts; Change 6: Broadcasting Facilities; Change 8: Houses of Worship (HOW); Change 11: Codes and Standards; Change 12: Alternate Project Legal Considerations; and Change 13: State and Tribal Admin Plans. The proposed rule would also result in familiarization costs. FEMA estimates the total undiscounted cost of this proposed rule, as assessed against a pre-statutory baseline, would be \$8,317,432 per year over a future ten-year period.

*Change 2: PKEMRA* and the PETS Act authorized FEMA to provide assistance for the rescue, care, shelter, and essential needs of household pets and service animals. FEMA implemented this change via PA guidance and proposes to codify it through this rule. FEMA used data from Enterprise Data Warehouse (EDW) database between 2006 and 2019 to estimate costs of assistance for the rescue, care, shelter, and essential needs of household pets and service animals. FEMA estimated an increase in costs for recipients for completing additional assistance request forms and FEMA for reviewing these additional forms totaling \$3,496 (\$3,392 recipients + \$104 FEMA) per year.

*Changes 1, 3, 6, and 8:* The definition of PNP's was expanded by multiple statutory amendments occurring between 1988–2018 to include the following: rehabilitational facilities in 1988, community and performing arts facilities in 2007, broadcasting facilities in 2015, and houses of worship in 2017. FEMA implemented all these changes

via PA guidance and proposes to codify them through this rule. FEMA used PNP project data from the EDW database for 2000–2019 to estimate costs for these changes but impacts in many cases were estimated with fewer than 10 years of data due to different dates of implementation. FEMA estimated an increase in costs for PNP recipients for completing assistance request forms and FEMA for reviewing these forms totaling \$90,585 (rehabilitational facilities \$10,890 (\$10,516 recipients + \$374 FEMA) + community and performing arts \$1,485 (\$1,434 recipients + \$51 FEMA) + broadcasting \$1,485 (\$1,434 recipients + \$51 FEMA) + house of worships \$76,725 (\$74,090 recipients + \$2,635 FEMA)) per year.

*Change 11: DRRRA* section 1235(b) defines the framework for consistent and appropriate implementation of consensus-based codes, specifications, and standards requirement for disaster-related repair, restoration, reconstruction, or replacement of buildings, roads and bridges, electric power, potable water, and wastewater projects. FEMA implemented this statutory change in 2019. Because this change was recently made and these types of projects can take years to complete, FEMA does not have 10 years of data with the change in effect. Therefore, FEMA estimated the impact of this change against a pre-statutory baseline by using data pulled from EDW from 2010 through 2018. During this time period, FEMA provided assistance for an average of 2,386 projects (PA categories: C—roads/bridges, E—buildings/equipment, F—utilities) per year.

FEMA used the Building Codes Adoption Tracking (BCAT) Regional

reports<sup>95</sup> to identify projects in States with moderate to low hazard-resistant building code adoption rates. FEMA expects the consensus-based codes and standards requirement would impact projects in moderate to low hazard-resistant building code areas by applying more stringent requirements than the local codes and standards. Based on the BCAT reports, FEMA estimates the number of impacted projects from 2010 to 2018 was 1,313 projects per year and the average annual amount for these projects was \$819,485,316 (\$179,372,869 non-Federal share + \$640,112,447 Federal share) per year. FEMA developed a project cost increase range of 1 percent to 10 percent based on input from subject matter experts and is in line with additional costs estimates of hazard-resistant building codes referenced in the 2020 Building Codes Saves: A Nationwide Study and 2019 Natural Hazard Mitigation Saves Report.<sup>96</sup> This range of additional costs reflects the unknown variations between local codes and/or standards used and the consensus-based codes and standard, and FEMA expects Change 11 would have limited impacts

<sup>95</sup> FEMA Building Code Adoption Tracking: Regions 1–10 Reports, 2023. A State or Territory is classified as moderate or lower resistance when less than 75 percent of jurisdictions have adopted hazard-resistant building codes. Available at <https://www.fema.gov/emergency-managers/risk-management/building-science/bcat/fact-sheets>. Accessed May 2, 2023

<sup>96</sup> Building Codes Saves: A National Study, page 1–6, [https://www.fema.gov/sites/default/files/2020-11/fema\\_building\\_codes\\_save\\_study.pdf](https://www.fema.gov/sites/default/files/2020-11/fema_building_codes_save_study.pdf). Accessed August 9, 2023. Additional reference, Natural Hazard Mitigation Saves: 2019 Report, page 70, 126, 143, Additional construction cost estimates for flooding 1.7 percent, hurricane 1 percent, and safe room wind 5 to 7 percent, respectively. [https://www.nibs.org/files/pdfs/NIBS\\_MMC\\_MitigationSaves\\_2019.pdf](https://www.nibs.org/files/pdfs/NIBS_MMC_MitigationSaves_2019.pdf). Accessed August 9, 2023.

on projects costs due to FEMA's policy referencing multiple industry consensus-based codes and standards that may be selected from to meet the requirement.<sup>97</sup> Accordingly, for the impacted 1,313 projects, FEMA estimated between an additional \$8,194,853 ( $\$819,485,316 \times 1$  percent) and \$81,948,532 ( $\$819,485,316 \times 10$  percent) per year in PA total project costs for the consensus-based codes and standards requirement. Due to the policy implementation in November 2019, little post-implementation data were available. For the primary estimate of this change under a pre-statutory baseline, FEMA selected the lower estimate of \$8,194,853 per year, due to the change aligning with commonly used industry building standards. Not all of these additional costs are borne by recipients as PA projects have a cost share structure; the increased total project costs for more stringent codes and standards are partially offset by FEMA in form of increased grants (transfer payments; addressed below) resulting in a higher the Federal cost share amount provided to recipients.

**Change 12: Alternate Project Legal Considerations** is the proposal to add a requirement for alternate projects that the recipient must identify any other legal considerations that might impact the project, such as liens on property, ownership issues, or zoning concerns, beyond those currently required. FEMA has not yet implemented this change and proposes to do so through this rule. FEMA anticipates that the burden to identify any legal considerations would be comparable to that of identifying issues required under the current regulations, such as floodplain management and insurance considerations, as they are similar in nature. FEMA estimates the burden associated with identifying floodplain management and insurance considerations to be 0.5 hours.<sup>98</sup> Based on data from 2010–2019, on average,

<sup>97</sup> Appendix A: Consensus-Based Codes, Specifications and Standards, page 9–16. December 20, 2019. [https://www.fema.gov/sites/default/files/2020-05/DRRA1235b\\_Consensus\\_BasedCodes\\_Specifications\\_and\\_Standards\\_for\\_Public\\_Assistance122019.pdf](https://www.fema.gov/sites/default/files/2020-05/DRRA1235b_Consensus_BasedCodes_Specifications_and_Standards_for_Public_Assistance122019.pdf).

<sup>98</sup> See Information Collection Request 202208–1660–001, Special Considerations Questions Form 009–0–120, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202208-1660-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202208-1660-001). Until recently, information about floodplain management and insurance considerations was captured on Special Considerations Questions Form 009–0–120, with an estimated hour burden of 0.5 hours per response. This collection has been revised and now captures floodplain management and insurance considerations information on different forms that also ask for other information. See Information Collection Request 202212–1660–015, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202212-1660-015](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-1660-015).

FEMA funded 53 alternate projects per year. Using the 0.5 hour burden estimate as the estimated time required to complete the legal considerations form and the State government loaded mean wage rate of \$54.10 ( $\$33.81$  hourly mean wage for Emergency Management Directors  $\times 1.6$  wage rate multiplier) yields an annual average cost of \$1,434 (53 projects  $\times 0.5$  hours  $\times \$54.10$  fully-loaded wage rates for Emergency Management Directors).<sup>99</sup> Because FEMA has not implemented this change and proposes to do so through this rule, the estimated annual cost of Change 12 is the same whether measured against the no-action or pre-statutory baseline.

**Change 13: State and Tribal Administrative Plans** is FEMA's proposal to add certain requirements to State and Tribal administrative plans. As currently required, all recipients file administrative plans with FEMA.<sup>100</sup> This requirement includes Indian Tribal governments when they choose to act as a recipient. The proposed rule would add that recipient administrative plans must include an outline for timely closeout of project and disaster-specific staffing plans. FEMA subject-matter experts estimate that 93 respondents (56 States/Territories and 37 Tribes acting as recipients)<sup>101</sup> would provide one Administrative Plan per year and that the additional activities identified above would add an average of 8 hours of effort to the current burden estimate in the first year, and then 4 hours in each successive year to account for any updates needed. Using the State Emergency Management Directors, the fully-loaded wage rate is \$54.10 ( $\$33.81$  hourly mean wage for Management Directors  $\times 1.6$  wage rate multiplier), which yields a total burden of \$40,250 (93 respondents  $\times 1$  annual plan  $\times 8$  hours  $\times \$54.10$  fully-loaded wage rate for Management Directors) in year one and \$20,125 (93 respondents  $\times 1$  annual plan  $\times 4$  hours  $\times \$54.10$  fully-loaded wage rate for Management Directors) each year after that.<sup>102</sup> Because FEMA

<sup>99</sup> Bureau of Labor Statistics, Occupational Employment Survey May 2019, SOC 11–9161 Emergency Management Directors: mean hourly wage \$33.81. [https://www.bls.gov/oes/2019/may/naics4\\_999200.htm#11-0000](https://www.bls.gov/oes/2019/may/naics4_999200.htm#11-0000). Fully loaded wage rates include other benefits. We are using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for cost of benefits, such as health insurance, to the employer. Accessed July 29, 2020.

<sup>100</sup> 44 CFR 206.207.

<sup>101</sup> 56 States includes 50 states and 6 territories: the District of Columbia, and territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands. FEMA's annual estimate of 37 Tribes was based on the number of Tribes acting as recipients historically.

<sup>102</sup> Bureau of Labor Statistics, Occupational Employment Survey May 2019, SOC 11–9161

has not implemented this change and proposes to do so through this rule, the estimated annual cost of Change 13 is the same whether measured against the no-action or pre-statutory baseline.

**Change 14: Work Documentation** relates to two PA documentation requirement changes. First, FEMA proposes to adjust the time-period during which an applicant must identify and report all disaster impacts included on project applications from a 60-day time-period to within 90 calendar days following FEMA's approval of the Request for PA to ensure applicants have adequate time to identify and report the impacts. This would be a change from the existing deadline, which is 60 days following the Recovery Scoping Meeting with FEMA. FEMA expects this additional time for documentation would not impose additional cost burden on applicants or FEMA.

Second, FEMA proposes to require applicants to submit all eligible work and costs documentation within 30 calendar days following a site inspection or 120 calendar days following FEMA's approval of the Request for PA, whichever is later. There is no current submission date for eligible work and costs documentation. FEMA used PA project data from 2016 through 2019 to estimate the percentage of projects that met the 120 day proposed submission dates due to PA grants process and system changes prior to 2016. This period from 2016 through 2019 reflects the new grants delivery model<sup>103</sup> and new software applications, "PA Grants Manager" and "Grants Portal,"<sup>104</sup> used for all stakeholders involved in the PA grant process since 2016. FEMA estimates that more than 45 percent of completed work documentation are complete within 120 days of FEMA's approval of the Request for PA. FEMA expects the new requirement to submit documentation within a certain

Emergency Management Directors: mean hourly wage \$33.81. [https://www.bls.gov/oes/2019/may/naics4\\_999200.htm#11-0000](https://www.bls.gov/oes/2019/may/naics4_999200.htm#11-0000) (accessed July 29, 2020). Fully loaded wage rates include other benefits, we are using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for cost of benefits, such as health insurance, to the employer. FEMA assumes the equivalent of a managerial position in State or local government would prepare Administrative Plans, PWs, and other FEMA forms.

<sup>103</sup> PA Delivery Model Fact Sheet, 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 June 12, 2024).

<sup>104</sup> PA Grant Manager and Grants Portal Fact Sheet, available at: [https://www.fema.gov/sites/default/files/2020-07/fema\\_pa\\_grants-manager-grants-portal-tool\\_factsheet.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_pa_grants-manager-grants-portal-tool_factsheet.pdf) (last accessed June 12, 2024).

timeframe would not impose an additional cost burden on applicants because FEMA currently requires the documentation prior to obligating PA funds and close to half of applicants meet the requirement voluntarily. FEMA expects all applicants to meet the new documentation requirement as FEMA believes the lack of a formal deadline is the reason for delays in submitting these documents. Additionally, applicants may request documentation time extensions for extenuating circumstances as needed consistent with the current practice for requesting extensions for project work completion deadlines.<sup>105</sup> Accordingly, FEMA estimates the proposed changes to documentation deadlines would not impose additional future cost burdens. Because FEMA has not implemented this change and proposes to do so through this rule, this estimated impact is the same whether measured against the no-action or pre-statutory baseline.

Changes 4, 5, 7, 9, and 10 did not result in any additional costs post implementation and FEMA does not expect additional costs in the future, as measured against the pre-statutory baseline.

*Change 4:* CDL Program, The SAFE Port Act amended the Stafford Act by increasing the amount that communities may receive in a community disaster loan from no greater than 25 percent to no greater than 50 percent of their annual operating budgets when revenue losses suffered are equal to greater than 75 percent of their operating budget. FEMA implemented updated guidance in 2012 reflecting this CDL change. FEMA estimated a pre-statutory baseline for total costs at no costs as CDLs above

25 percent were not possible prior to the change. From 2012–2019, FEMA did not have any CDLs at the higher percent and FEMA estimated this change did not create additional cost burdens. Additionally, documentation requirements are consistent for all CDLs meaning the change allows for higher loan amounts and does not impact recipient documentation. The CDL program does not adjust the maximum loan amount of \$5,000,000 for inflation and as inflation increases prices and local government budgets each year the probability of a CDL issued above 25 percent declines with each year.

*Change 5:* Debris Removal Pilot allowed straight-time labor costs to be eligible for budgeted employees conducting debris removal activities. FEMA estimated the Debris Pilot change did not create additional costs. The increase in eligibility for budgeted employees conducting debris removal activities did not change reporting requirements for debris removal projects, and therefore did not impact costs.

*Changes 7 and 10:* The definition of PNP was expanded to include Food Banks (change 7) in 2017 and Center-Based Childcare Facilities (change 10) in 2018. FEMA implemented these changes via PA guidance and proposes to codify them through this rule. FEMA estimated that the additional cost for expanding eligibility to facilities that collect, store, and distribute food to food banks and Center-Based Childcare facilities were zero dollars because there were zero PA awards for these PNPs since they became eligible. FEMA acknowledges that there may be PNPs that receive PA funding in the future.

However, due to the limited sample size, FEMA was unable to estimate the number of these PNP projects impacted by these changes over the next 10-year period. If such PNPs were to receive an award in the future, FEMA estimated potential future costs of \$495 (\$478 recipient + \$17 FEMA) per additional award.

*Change 9:* Alternate Project Funding, FEMA estimated the change to funding limitations for alternate projects had no impact on total costs because it increases FEMA portion of funding per project. FEMA has not received an increase in alternate projects applications post implementation and FEMA does not expect this change to impact the number of alternate projects in the future.

The proposed regulation would also result in familiarization costs (as detailed in the above No-Action Baseline Section). FEMA estimates it would cost \$49,264 for applicants to familiarize themselves with the proposed rule under a no-action and pre-statutory baseline. This would be a one-time cost for the applicants in the first year.

Under a pre-statutory baseline, FEMA estimates the total annual cost undiscounted would be \$8,379,882 for only the first year. The first year includes calculations for familiarization costs. Then the total annual undiscounted cost would be \$8,310,493 for each year after that. The discounted total 10-year cost at 3 percent and 7 percent, respectively, would be \$70,957,558 and \$58,434,274. The annualized cost would be \$8,318,390 and \$8,319,726 at the 3 and 7 percent discount rates (Table 6).

TABLE 6—SUMMARY OF PRE-STATUTORY BASELINE COSTS, FUTURE 10-YEAR PERIOD [2019\$]

Year	FEMA costs	Recipient costs	Total costs	Annual costs discounted at 3%	Annual costs discounted at 7%
2020	\$3,215	\$8,376,667	\$8,379,882	\$8,135,808	\$7,831,665
2021	3,215	8,307,278	8,310,493	7,833,437	7,258,706
2022	3,215	8,307,278	8,310,493	7,605,278	6,783,838
2023	3,215	8,307,278	8,310,493	7,383,765	6,340,035
2024	3,215	8,307,278	8,310,493	7,168,704	5,925,267
2025	3,215	8,307,278	8,310,493	6,959,907	5,537,632
2026	3,215	8,307,278	8,310,493	6,757,191	5,175,357
2027	3,215	8,307,278	8,310,493	6,560,380	4,836,783
2028	3,215	8,307,278	8,310,493	6,369,301	4,520,358
2029	3,215	8,307,278	8,310,493	6,183,787	4,224,633
Total	32,150	83,142,169	83,174,319	70,957,558	58,434,274
Annualized				8,318,390	8,319,726

<sup>105</sup> Federal Emergency Management Agency (June 1, 2020). Public Assistance Program and Policy

Guide, version 4, FEMA Policy 104–009–2, Work Completion Deadlines page 196, [https://](https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf)

[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).

## Benefits

All benefits associated with the proposed rule would be qualitative. The proposed rule would improve clarity and align FEMA regulations with statutory changes and current practices under a no-action and pre-statutory baseline. Although not quantified, these changes would result in users better understanding the PA program. Such increased clarity and understanding would improve the efficiency and consistency of implementation of FEMA's PA program.

The clearer FEMA regulations are, the faster and better applicants can understand and correctly apply them, which in turn can speed disaster assistance to communities and help them support survivors. This would be especially helpful when applicants bring on new staff to States or localities that experience disasters infrequently need to familiarize themselves with the program and its requirements. This increased efficiency allows both applicants and FEMA to direct their energy and resources towards responding to and recovering from the disaster or emergency. FEMA is unable to quantify this impact, but it would be an important intended result of this proposed rule.

## No-Action Baseline

Changes 1–11 have already been implemented. As discussed above, codifying these changes would improve clarity by aligning FEMA regulations with statutory changes and current practices. Benefits from newly proposed changes would include: (1) Change 12: Reduced project delays related to legal consideration; (2) Change 13: Keeping administrative plans up-to-date would provide additional staffing information about prior disasters, helping recipients to be in a better position to respond to and recover from emergencies and disasters; (3) Change 14: Increasing the impact documentation date by 30 days earlier in the process would provide benefits by helping to ensure applicants have adequate time to identify and report the impacts prior to the start of the project benefitting both the applicant's recovery and FEMA's ability to assist with their recovery, and FEMA expects the submission deadlines for eligible work and costs documentation would set expectations early in the process and help timely closeout of projects benefiting FEMA, recipients, and disaster-impacted communities.

## Pre-Statutory Baseline

In this section, FEMA examines the benefits against a pre-statutory baseline.

FEMA has already implemented Changes 1–11; they provide the following benefits: (1) Change 2: Expanded PA eligibility for the rescue, care, shelter, and essential needs of household pets and service animals provides additional assistance to recipients allowing them to more quickly address pet related needs during and after a damage; (2) Changes 1, 3, 6, 7, 8, and 10: The expanded definition of PNP to include rehabilitational facilities, community and performing arts facilities, broadcasting facilities, food banks, houses of worship, and center-based childcare facilities allows FEMA to consistently provide additional assistance to such PNPs, which enables them to recover more quickly from a disaster; (3) Change 4: CDL Program allows local governments to receive higher loans amounts if they suffered extreme losses due to a disaster, which assists local governments in recovering more quickly from extreme disaster losses; (4) Change 5: Debris Removal Pilot allows straight-time labor costs to be eligible for budgeted employees conducting debris removal activities, which increases the eligible supply of debris removal staff for PA projects and increases recipient flexibility for debris removal; (5) Change 9: Alternate Project Funding provides additional assistance consistent with standard project funding, which allows communities greater flexibility when deciding which project type benefits the communities more; and (6) Change 11: Codes and Standards requires the use of consensus-based codes that incorporate hazard-resistant design for repairs, which promotes resiliency and reduces risk of future repair and replacement of disaster damaged facilities funded by PA. Facilities restored to a code that includes hazard-resistant designs and criteria would experience fewer interruptions and less damage in the future enabling those facilities to continue to function during and after a disaster. The benefits from newly proposed Changes 12–14 would be reduced project delays related to legal consideration, keeping administrative plans up-to-date and providing additional staffing information, and increased clarity and adding more time early in the application process for impact documentation.

## Transfer Payments

Transfer payments are monetary payments from one group to another that do not affect the total resources available to society.<sup>106</sup> The grants FEMA

provides to recipients through PA are considered transfer payments because these are monetary payments from FEMA to recipients do not affect the total resources available to society. In this analysis, FEMA has analyzed the impact of this proposed rule on transfer payments.

## No-Action Baseline

This rule will not result in any impacts to transfer payments under a no-action baseline.

## Pre-Statutory Baseline

In this section, FEMA examines the effects of the proposed changes on transfer payments, as measured against a pre-statutory baseline. FEMA has already implemented changes 1–11 and discusses their impacts on transfer payments: Change 2 authorized assistance for the rescue, care, shelter, and essential needs of household pets and service animals; Changes 1, 3, 6, 7, 8, and 10 expanded PNP eligibility; Change 4: CDL Program; Change 5: Debris Removal Pilot; Change 9: Alternate Project Funding; and Change 11: Codes and Standards.

*Change 2:* In 2006, FEMA was authorized to provide assistance for the rescue, care, shelter, and essential needs of household pets and service animals. FEMA proposes to codify this change in regulation. Before this change, such assistance was not eligible under PA, and FEMA estimates the pre-statutory baseline at zero dollars. FEMA used data from EDW database from 2006 through 2019 to estimate the assistance FEMA provided for rescue, care, shelter, and essential needs of household pets and service animal related assistance during this time period. FEMA estimates an average of 8 awards per year for animal related essential assistance and an average award amount of \$73,808. In total, rescue, shelter, care, and essential needs of household pets and service animal related assistance increased from zero to an average of \$590,464 (8 projects × \$73,808) per year in PA funding from FEMA to recipients.

*Changes 1, 3, 6, 7, 8, and 10:* FEMA was authorized to expand PA grant funding eligibility for the following types of PNPs: rehabilitational facilities (in 1988), community and performing arts facilities (in 2007), broadcasting facilities (in 2015), food banks (in 2017), houses of worship (in 2017), and center-based childcare facilities (in 2017). FEMA proposes to codify these changes in regulation. To estimate the impacts of these changes measured against a pre-

<sup>106</sup> Office of Management and Budget, Circular A-4, Regulatory Analysis, September 17, 2003.

Available at <https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf>.

statutory baseline, FEMA used PNP project data from the EDW database for 2000–2019; however, impacts in many cases were estimated with fewer than 10-years of data due to different dates of implementation. FEMA estimates an average increase in transfer payments through PA funding from FEMA to PNP recipients of \$3,816,658 (rehabilitational facilities \$1,126,114 + community and performing arts \$224,514 + broadcasting \$344,235 + house of worships \$2,121,795) per year.

*Change 9:* In August 2017, the Disaster Recovery Reform Act (DRRA) amended the Stafford Act to remove the 90 percent (75 percent for PNPs) alternate project funding limit of the original project eligible Federal cost share amount. FEMA proposes to codify these changes in regulation. Because this change was recently made and FEMA does not have adequate data with the change in effect, FEMA estimated the impact of this change against a pre-statutory baseline by using data pulled from EDW for PA alternate projects from 2010 to 2019 and recalculating obligations for alternate projects at the full eligible Federal cost share consistent with standard projects. FEMA does not believe this change impacted the number of projects but rather just the funding source for those projects. Accordingly, FEMA estimates the average annual number of affected projects over this time period is 53. FEMA estimates that if this change had been in effect for the entire 2010 to 2019 period, the average annual obligation would have increased from \$349,196 to \$396,834 per project, and the average total obligation would have increased from \$18,507,388 ( $\$349,196 \times 53$  projects) to \$21,032,202 ( $\$396,834 \times 53$  projects) per year. FEMA estimates an increase of PA assistance from FEMA to PA recipients of \$2,524,814 ( $\$21,032,202 - \$18,507,388$ ) per year for the removal of the alternate project funding limit.

*Change 5:* Debris Pilot relates to the implementation of alternative debris removal procedures through a pilot program starting on June 28, 2013. Before this pilot, FEMA would only reimburse for debris removal costs for overtime labor of recipient budgeted employees or debris removal costs for third-party contractors. The Debris Pilot allows FEMA to reimburse recipients for straight-time labor costs for budgeted employees to perform all or part of debris removal operations. FEMA used data from the EDW database for Debris Pilot projects and those choosing to opt out of the Pilot (non-Pilot projects) from 2013 through 2019 to estimate the baseline and impact of the pilot

program. The Pilot project data includes straight-time labor cost projects and other contract projects to allow for comparison to the non-Pilot projects.<sup>107</sup> This proposed codification for the eligibility of recipient's budgeted employee straight-time labor costs is directly related to the Debris Pilot for straight-time labor and would not impact the other contracts portion (such as overtime labor) of the Debris Pilot. During this period, the average number of Debris Pilot projects was 501 per year, and the average Federal obligation amount was \$445,721 per project equaling an annual Federal obligation amount of \$223,306,221 ( $\$445,721 \times 501$  Debris Pilot projects) per year.

For non-Pilot projects during this period, the average number of projects per year was 514, and the average obligation amount was \$473,328. Based on this information, FEMA estimates that if the debris pilot had not been in place (the pre-statutory baseline) total assistance for the 501 debris projects that did participate in the pilot would have been \$237,137,328 ( $\$473,328 \times 501$  Debris Pilot projects) per year over this time period. By using the non-Alternative Debris Removal project average obligation amount, FEMA converted the Debris Pilot removal projects into non-Pilot project estimates.

Next FEMA isolated the Debris Pilot straight-time labor portion from the Debris Pilot other contract costs because this debris removal change would be specific to the straight-time labor portion of the Debris Pilot. FEMA used the average straight-time labor costs project obligation from 2013–2019 of \$119,969,697 per year and the Pilot project total obligations of \$223,306,221 per year to estimate that 53.7 percent ( $\$119,969,697 \div \$223,306,221$ ) of Debris Pilot obligations were for straight-time labor cost projects. Because the other 46.3 percent of debris pilot obligations were for overtime or contract costs, which were unaffected by this change, FEMA compares non-pilot to pilot costs for only the 53.7 percent of obligations affected by the rule. FEMA applied this percentage to non-pilot obligations to calculate the amount in obligations replaced by straight-time cost labor: \$127,342,745 ( $\$237,137,328 \times 53.7$  percent) per year. FEMA considers this the baseline cost without the pilot. FEMA then took the difference between the average straight-time labor costs for pilot obligations of \$119,969,697 per year and the baseline estimate \$127,342,745 per year. FEMA estimated

a transfer payment decrease of \$7,373,048 ( $\$119,969,697 - \$127,342,745$ ) per year due to implementation of the Debris Pilot.

*Change 11:* DRRA section 1235(b) defines the framework for consistent and appropriate implementation of consensus-based codes, specifications, and standards requirement for disaster-related repair, restoration, reconstruction, or replacement of buildings, roads and bridges, electric power, potable water, and wastewater projects. FEMA implemented this statutory change in 2019. Because this change was recently made and these types of projects can take years to complete, FEMA does not have 10 years of data with the change in effect. Therefore, FEMA estimated the impact of this change against a pre-statutory baseline by using data pulled from EDW from 2010 through 2018. During this time period, FEMA provided assistance for an average of 2,386 projects (PA categories: C—roads/bridges, E—buildings/equipment, F—utilities) per year.

FEMA used Building Codes Adoption Tracking (BCAT) Regional reports<sup>108</sup> to identify projects in States with moderate to low hazard-resistant building code adoption rates. FEMA expects the consensus-based codes and standards requirement would impact projects in moderate to low hazard-resistant building code areas by applying more stringent requirements than the local codes and standards. Based on the BCAT reports, FEMA estimates the number of impacted projects from 2010 to 2018 was 1,313 projects per year and the average annual amount for these projects was \$819,485,316 ( $\$179,372,869$  non-Federal share +  $\$640,112,447$  Federal share) per year. FEMA estimated the average Federal cost share for PA project was 78 percent ( $\$640,112,447$  Federal share +  $\$819,485,316$  total project amount). FEMA developed a project cost increase range of 1 percent to 10 percent based on input from subject matter experts and is in line with additional costs estimates of hazard-resistant building codes referenced in the 2020 Building Codes Saves: A Nationwide Study and 2019 Natural Hazard Mitigation Saves

<sup>107</sup> Straight-time labor cost is the wage rate for budgeted employees during the standard workday or work week.

<sup>108</sup> FEMA Building Code Adoption Tracking: Regions 1–10 Reports, 2023. A State or Territory is classified as moderate or lower resistance when less than 75 percent of jurisdictions have not adopted hazard-resistant building codes. Available at <https://www.fema.gov/emergency-managers/risk-management/building-science/bcat/fact-sheets>. Accessed May 2, 2023.

Report.<sup>109</sup> This range of additional costs reflects the unknown variations between local codes and/or standards used and the consensus-based codes and standard, and FEMA expects Change 11 would have limited impacts on projects costs due to FEMA’s policy referencing multiple industry consensus-based codes and standards that may be selected from to meet the requirement.<sup>110</sup> Accordingly, for the impacted 1,313 projects, FEMA estimated an increase in FEMA’s portion of the cost share (transfer payments) of between an additional \$6,391,985 ( $\$819,485,316 \times 1$  percent  $\times$  78 percent Federal share) and \$63,919,855 ( $\$819,485,316 \times 10$  percent  $\times$  78 percent Federal share) per year in PA project costs for the consensus-based codes and standards requirement. Due to the interim policy implementation in November 2019, little post-implementation data were available. For the primary estimate of this change under a pre-statutory baseline, FEMA selected the lower estimate of \$6,391,985 per year, due to the change aligning with commonly used industry building standards.

*Change 4:* In 2012, FEMA released guidance that implemented changes by the SAFE Port Act which increased the amount that communities may receive in a CDL by allowing communities to receive up to 50% of their annual operating budgets if they suffered a loss of tax or other revenue equal to or greater than 75% of their annual operating budget in the fiscal year in

which the disaster occurred, up to \$5,000,000.<sup>111</sup> FEMA proposes to codify this change in regulation. Prior to the 2012 guidance, loans administered through the CDL program were not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurred, not to exceed \$5,000,000.<sup>112</sup> FEMA used CDL program data to analyze the effects of this change against the pre-statutory baseline. CDL data was available from 2012 through 2019.<sup>113</sup> During this period, zero loans were issued above 25 percent of the local government’s operating budget. It is rare for a community to lose revenues up to 75 percent of an operating budget following a disaster, and therefore, local governments would not often qualify for the higher loan amount. Additionally, the CDL program does not adjust the maximum loan amount of \$5,000,000 for inflation and as inflation increases prices and local government budgets each year the probability of a CDL issued above 25 percent declines with each year. Therefore, FEMA does not expect to issue a CDL loan above 25 percent of the local government’s operating budget in the next 10 years.

Changes 7, 10, and 14 did not result in any additional transfer payments post implementation and FEMA does not expect additional transfer payments in the future, as measured against the pre-statutory baseline.

*Change 7: Food Banks and Change 10: Center-Based Childcare Facilities,* FEMA estimated that expanding

eligibility to facilities that collect, store, and distribute food to food banks and Center-Based Childcare facilities did not result in any additional transfer payments post implementation and FEMA does not expect additional transfer payments in the future because there were zero PA awards for these PNPs. FEMA acknowledges that there may be PNPs that receive PA funding in the future. However, due to the limited sample size, FEMA was unable to estimate the number of these PNPs impacted by these changes over the next 10-year period.

*Change 14: Work Documentation,* FEMA does not expect these documentation changes to impact transfer payments. These changes alter when FEMA requires documents from applicants. However, these changes do not change whether an applicant is eligible to receive assistance. Additionally, FEMA expects all applicants to meet these new documentation submission requirements.

For the pre-statutory baseline, FEMA estimates the net 10-year undiscounted transfer payments from FEMA to applicants would be \$59,508,730. The total 10-year discounted transfer payments would be \$50,762,154 at a 3 percent discount rate and \$41,796,443 at a 7 percent discount rate, with annualized transfer payments of \$5,950,873 at both 3 and 7 percent discount rates (Table 7).

TABLE 7—SUMMARY OF TRANSFER PAYMENTS, PRE-STATUTORY BASELINE, FUTURE 10-YEAR PERIOD [2019\$]

Year	Transfers from FEMA to recipients	Total transfers undiscounted	Annual transfers discounted at 3%	Annual transfers discounted at 7%
2020	\$5,950,873	\$5,950,873	\$5,777,547	\$5,561,564
2021	5,950,873	5,950,873	5,609,269	5,197,723
2022	5,950,873	5,950,873	5,445,892	4,857,685
2023	5,950,873	5,950,873	5,287,274	4,539,893
2024	5,950,873	5,950,873	5,133,275	4,242,890
2025	5,950,873	5,950,873	4,983,762	3,965,318
2026	5,950,873	5,950,873	4,838,604	3,705,905
2027	5,950,873	5,950,873	4,697,674	3,463,462
2028	5,950,873	5,950,873	4,560,849	3,236,881
2029	5,950,873	5,950,873	4,428,008	3,025,122

<sup>109</sup> Building Codes Saves: A National Study, page 1–6, [https://www.fema.gov/sites/default/files/2020-11/fema\\_building-codes-save\\_study.pdf](https://www.fema.gov/sites/default/files/2020-11/fema_building-codes-save_study.pdf). Accessed August 9, 2023. Additional reference, Natural Hazard Mitigation Saves: 2019 Report, page 70, 126, 143, Additional construction cost estimates for flooding 1.7 percent, hurricane 1 percent, and safe room wind 5 to 7 percent, respectively. [https://www.nibs.org/files/pdfs/NIBS\\_MMC](https://www.nibs.org/files/pdfs/NIBS_MMC)

*MitigationSaves\_2019.pdf*. Accessed August 9, 2023.

<sup>110</sup> Appendix A: Consensus-Based Codes, Specifications and Standards, page 9–16. December 20, 2019. [https://www.fema.gov/sites/default/files/2020-05/DRRA1235b\\_Consensus\\_BasedCodes\\_Specifications\\_and\\_Standards\\_for\\_Public\\_Assistance122019.pdf](https://www.fema.gov/sites/default/files/2020-05/DRRA1235b_Consensus_BasedCodes_Specifications_and_Standards_for_Public_Assistance122019.pdf).

<sup>111</sup> For more information, see Congressional Research Service, FEMA’s Community Disaster

Loan (CDL) Program: A Primer. July 13, 2020. <https://crsreports.congress.gov/product/pdf/IF/IF11600>.

<sup>112</sup> FEMA places the approved amount of funds into account for use by the local government, which can be drawn upon the loan at any point during the five-year loan period.

<sup>113</sup> There were zero CDLs issued in 2014.

TABLE 7—SUMMARY OF TRANSFER PAYMENTS, PRE-STATUTORY BASELINE, FUTURE 10-YEAR PERIOD—Continued  
[2019\$]

Year	Transfers from FEMA to recipients	Total transfers undiscounted	Annual transfers discounted at 3%	Annual transfers discounted at 7%
Total .....	59,508,730	59,508,730	50,762,154	41,796,443
Annualized .....	.....	.....	5,950,873	5,950,873

TABLE 8—CIRCULAR A–4 ACCOUNTING STATEMENT, NO-ACTION BASELINE (2019\$), 2020–2029

Category	3 Percent discount rate	7 Percent discount rate	Source citation
<b>BENEFITS</b>			
Annualized Monetized .....	N/A	N/A	RIA Section 9.
Annualized quantified, but unmonetized benefits .....	N/A	N/A	
Qualitative (unquantified) benefits .....	<ul style="list-style-type: none"> <li>Improving clarity and aligning FEMA regulations with statutory changes and current practices and procedures.</li> <li>Identifying legal considerations early in the application process would allow for more complete alternate project review.</li> <li>Increasing clarity and adding more time early in the application process for work documentation.</li> <li>Keeping administrative plans up-to-date and providing additional staffing information about prior disasters helping recipients be in a better position to respond to and recover from emergencies and disasters.</li> </ul>		
<b>COSTS</b>			
Annualized Monetized .....	\$29,457	\$30,792	RIA Section 8.
Annualized quantified, but unmonetized, costs .....	N/A	N/A	
Qualitative (unquantified) costs .....	N/A		
<b>TRANSFERS</b>			
Annualized Monetized .....	\$0	\$0	RIA Section 11.
From/To .....			
Category	Effects		Source citation
Effects on State, local, and/or Tribal governments .....	<ul style="list-style-type: none"> <li>Establishing additional requirements for Administrative Plans, alternate project legal consideration identification, and application work documentation.</li> </ul>		RIA.
Effects on small businesses .....	<ul style="list-style-type: none"> <li>Codifying the Expansion of Federal assistance to specific types of facilities does not impact the number of small entities to receive aid from FEMA. In an average year, FEMA approves 28,721 PA projects and of those, FEMA estimated small entities to account for 19,818 projects.</li> </ul>		Regulatory Flexibility Act.
Effects on wages .....	None		N/A.
Effects on growth .....	None		N/A.

TABLE 9—CIRCULAR A–4 ACCOUNTING STATEMENT, PRE-STATUTORY BASELINE (2019\$), 2000–2029

Category	3 Percent discount rate	7 Percent discount rate	Source citation
<b>BENEFITS</b>			
Annualized Monetized .....	N/A	N/A	RIA Section 10.
Annualized quantified, but unmonetized benefits .....	N/A	N/A	
Qualitative (unquantified) benefits .....	<ul style="list-style-type: none"> <li>Expanding PA eligibility for certain types of PNPs and allowing FEMA to consistently provide additional assistance to such PNPs to allow them to recover more quickly from disaster-damage.</li> </ul>		
	<ul style="list-style-type: none"> <li>Increasing recipient flexibility when determining whether the community would benefit more from facility restoration or an alternate project.</li> </ul>		

TABLE 9—CIRCULAR A-4 ACCOUNTING STATEMENT, PRE-STATUTORY BASELINE (2019\$), 2000–2029—Continued

Category	3 Percent discount rate	7 Percent discount rate	Source citation
	<ul style="list-style-type: none"> <li>Increasing flexibility for debris removal projects by allowing FEMA to reimburse base and overtime wages for the employees of State, Tribal, or local governments.</li> <li>Improving clarity and aligning FEMA regulations with statutory changes and current practices and procedures.</li> <li>Promoting resiliency and reducing future damage risk of repaired facilities with consensus-based codes and standards requirement for PA funded projects.</li> <li>Identifying legal considerations early in the application process would allow for more complete alternate project review.</li> <li>Increasing clarity and adding more time early in the application process for work documentation.</li> <li>Keeping administrative plans up-to-date and providing additional staffing information about prior disasters would help recipients be in a better position to respond to and recover from emergencies and disasters.</li> </ul>		
<b>COSTS</b>			
Annualized Monetized .....	\$2,021,806	\$1,233,307	RIA Section 9.
Annualized quantified, but unmonetized, costs .....	N/A	N/A	
Qualitative (unquantified) costs .....	N/A		
<b>TRANSFERS</b>			
Annualized Monetized .....	\$739,294	–\$139,749	RIA Section 11.
From/To .....	<ul style="list-style-type: none"> <li>Increasing transfers from FEMA to PA recipients.</li> </ul>		
Category	Effects		Source citation
Effects on State, local, and/or Tribal governments .....	<ul style="list-style-type: none"> <li>Increasing PA eligibility of private non-profit organizations, more flexibility with alternate projects and debris removal projects, and additional requirements for Administrative Plan should better position communities for emergencies and disasters.</li> <li>Establishing additional requirements for Administrative Plans, alternate project legal consideration identification, and application work documentation.</li> </ul>		RIA.
Effects on small businesses .....	<ul style="list-style-type: none"> <li>Expanding Federal assistance through increasing the types of facilities eligible for PA increases the opportunity for small entities to receive aid from FEMA. In an average year, FEMA approves 28,721 PA projects and of those, FEMA estimated small entities to account for 19,818 projects.</li> </ul>		Regulatory Flexibility Act.
Effects on wages .....	None		N/A.
Effects on growth .....	None		N/A.

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended, requires agency review of proposed and final rules to assess their impact on small entities. When an agency promulgates a notice of proposed rulemaking under 5 U.S.C. 553, the agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies pursuant to 5 U.S.C. 605(b) that the rule, if promulgated, would not have a significant impact on a substantial number of small entities. As set forth below, this proposed rule would not have a significant impact on a substantial number of small entities. However, FEMA is publishing this IRFA to aid the public in commenting on the

potential impacts of the proposed requirements in this NPRM on small entities. FEMA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process when making a final determination.

FEMA prepared this IRFA to examine the impacts of the proposed rule on small entities. A small entity is: a small business (a business that is independently owned and operated and is not dominant in its field); a small not-for-profit organization (any not-for-profit enterprise that is independently owned and operated and is not dominant in its field); or a small

governmental jurisdiction (locality with fewer than 50,000 people). See 5 U.S.C. 601(3)–(6); see also 15 U.S.C. 632.

**1. A Description of the Reasons Why Action by the Agency Is Being Considered**

FEMA initiated this rulemaking to codify legislative requirements included in several Federal statutes that have amended sections of the Stafford Act, but not yet been incorporated by FEMA into its regulations. The rule also proposes revisions to improve program administration.

The Stafford Act authorizes the President to provide Federal assistance when the severity and magnitude of an incident or threatened incident exceeds the affected State, Territorial, Indian Tribal, or local government’s



capabilities to effectively respond or recover. If an emergency or major disaster is declared, FEMA may award Public Assistance grants to assist State, Territorial, Indian Tribal, and local governments and certain PNP organizations so communities can quickly respond to and recover from the emergency or major disaster.

The Public Assistance program provides a range of assistance, including direct services and financial assistance for emergency protective measures, such as emergency evacuation, sheltering, and debris removal, as well as financial assistance for the permanent restoration of facilities. In addition, the Stafford Act authorizes CDLs for any local government that has suffered a substantial loss of tax and other revenues as a result of a major disaster, and that demonstrates a need for financial assistance to perform its governmental functions.

## 2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

FEMA proposes to amend its Public Assistance and CDL program regulations to incorporate various amendments to the Stafford Act and to improve program administration. Section 701 of the Stafford Act, 42 U.S.C. 5201, provides for rulemaking authority to implement the provisions of the Act, and the Secretary delegated this authority to FEMA in Department of Homeland Security Delegation 9001.1. The Federal statutes that have amended the Stafford Act but that FEMA has yet to fully incorporate into FEMA's regulations include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), the Sandy Recovery Improvement Act of 2013 (SRIA), the Emergency Information Improvement Act of 2015, the Bipartisan Budget Act of 2018, and the Disaster Recovery Reform Act (DRRA).

## 3. A Description—and, Where Feasible, an Estimate of the Number—of Small Entities to Which the Proposed Rule Will Apply

The proposed rule would directly affect all eligible Public Assistance recipients. Amendments to the Stafford Act affect recipients that are small governmental jurisdictions with a population of less than 50,000, as defined at 5 U.S.C. 601(5), and PNPs that meet the small entity size standards

set by the SBA.<sup>114</sup> To estimate the effects of this proposed rule on small entities, FEMA identified the affected population and analyzed how the changes would affect those recipients and subrecipients based on a random sample. Using those results, FEMA then evaluated which recipients and subrecipients qualified as “small entities.” Eligible Public Assistance recipients may include States, U.S. Territories, and Indian Tribal governments; subrecipients may include cities, counties, towns, townships, villages, school districts, special districts, or PNPs. FEMA removed from this analysis any recipients that are States and U.S. Territories because they have populations greater than 50,000. FEMA also removed any Indian Tribal governments because they are not included in the definition of a small entity. The remaining recipients were either PNPs, local governments, or governmental organizations.

### Alternate Project Legal Considerations

FEMA proposes to add a requirement for alternate projects that the recipient must identify any “other legal considerations,” such as liens on property, ownership issues, or zoning concerns. FEMA assumes the recipient's burden to identify other legal considerations would be comparable to that of identifying the issues required under the current regulations,<sup>115</sup> such as floodplain management and insurance considerations, as they are similar in nature. FEMA estimates the burden associated with identifying floodplain management and insurance considerations to be 0.5 hours,<sup>116</sup> with an hourly wage rate of \$54.10.<sup>117</sup> Each

<sup>114</sup> Information on population sizes was obtained using the U.S. Census Bureau's City and Town Population Totals: 2010–2019. Available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html>. Small Business Administration, “Table of Size Standards” (.xlsx). Available at <https://www.sba.gov/document/support-table-size-standards>. Revenue and employment information for individual PNP's was obtained from PNP websites.

<sup>115</sup> See 44 CFR 203(d)(2)(v).

<sup>116</sup> See Information Collection Request 202208–1660–001, Special Considerations Questions Form 009–0–120, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202208-1660-001](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202208-1660-001). Until recently, information about floodplain management and insurance considerations was captured on Special Considerations Questions Form 009–0–120, with an estimated hour burden of 0.5 hours per response. Now, FEMA has consolidated the collection of floodplain management and insurance considerations information on different forms that also ask for other information. See Information Collection Request 202212–1660–015, [https://www.reginfo.gov/public/do/PRAViewICR?ref\\_nbr=202212-1660-015](https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-1660-015).

<sup>117</sup> Bureau of Labor Statistics, Occupational Employment Survey May 2019, SOC 11–9161 Emergency Management Directors: mean hourly

year, FEMA funds an average of 53 alternate projects. For comparison, in an average year FEMA approves 28,721 projects in total.<sup>118</sup>

To determine the number of small entities that would be affected by this proposed change, FEMA selected a random sample of 85 projects out of the 527 alternate projects from 2010 through 2019.<sup>119</sup> FEMA identified 51 recipients (60 percent) that met the definition of a small entity based on the population size of local governments (less than 50,000 population), or PNPs based on size standards set by the SBA.<sup>120</sup> Each of those small entities, if they are not already identifying legal considerations for alternate projects, would see an increased burden of \$27.05.<sup>121</sup> In an average year, FEMA approves 53 alternate projects, and 32 (60 percent of 53) projects are estimated to be for small entities.<sup>122</sup>

FEMA meets with the recipient and applicants for a kickoff meeting. The kickoff meeting is to address the specific needs of each eligible applicant. Currently, the recipient and FEMA discuss a variety of topics including documentation requirements, and the applicants may ask questions relating to project formulation, insurance requirements, eligibility criteria for work and costs, and required documentation. This is an opportunity for the applicants to receive guidance from FEMA and the recipient. This is particularly important for those small entities who may not have an in-house expert.

Although requiring applicants to identify legal requirements relevant to alternate projects would impose a new burden on small entities, identifying legal issues early in the project

wage \$33.81. Retrieved from: [https://www.bls.gov/oes/2019/may/naics4\\_999200.htm#11-0000](https://www.bls.gov/oes/2019/may/naics4_999200.htm#11-0000). Accessed December 2020.

Fully loaded wage rates include other benefits, using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for cost of benefits, such as health insurance, to the employer. FEMA assumes the equivalent of a managerial position in State or local government would prepare Administrative Plans, PWs, and other FEMA forms. Fully loaded Emergency Management Directors salary paid is  $\$33.81 \times 1.6 = \$54.10$

<sup>118</sup> A more fulsome discussion of the assumptions used here may be found in the RIA accompanying this proposed rule.

<sup>119</sup> FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula is  $n = N / (1 + N * e^{-2})$ . Therefore,  $527 / (1 + 527 * 0.1^{-2}) = 85$  (rounded).

<sup>120</sup> Small Business Administration. “Table of Size Standards.” Available at <https://www.sba.gov/document/support-table-size-standards>. Revenue and employment information for individual PNPs was researched using publicly available data sources, such as the PNP website.

<sup>121</sup>  $\$27.05 = 0.5 \times \$54.10$ .

<sup>122</sup>  $12,063 = 28,721 \times 42\%$ .

formulation phase is critical to FEMA in determining whether the project should be approved, or whether the legal issues will be prohibitive. Accordingly, this change could save applicants from beginning a project only to be halted before completion. FEMA estimates that this change would impose a burden of \$27.05 on 32 small entities annually.

#### State and Tribal Administrative Plans

Currently, all recipients are required to file an administrative plan with FEMA.<sup>123</sup> This requirement includes States, as well as Indian Tribal governments when they choose to act as a recipient. Accordingly, this burden would affect States and Indian Tribal governments, which are not small entities as defined by the Regulatory Flexibility Act. Therefore, this proposed change would not impact any small entities.

#### Clarifications & Other Minor Changes

Many of the changes proposed in this rule are clarifications or codifications of current policies, practices, and regulations. This means their only impact would be to increase the applicants' understanding of current processes. There would be no new transfers or costs associated with these changes. Clearer FEMA regulations can speed disaster assistance to communities and help them support survivors. This would be especially helpful to applicants that have brought on new staff or to localities that experience disasters infrequently who need to re-familiarize themselves with the program and its requirements. This increased efficiency would allow both applicants and FEMA to direct their energy and resources towards responding to and recovering from the disaster or emergency. Small entities may find these clarifications particularly useful, as they are less likely to have in-house experts.

These changes would not have a significant economic impact even though the number of small entities impacted could be substantial. To determine the number of small entities affected by these proposed changes, FEMA selected a random sample of 100 projects from 287,214 unique Public Assistance projects from 2010 through 2019.<sup>124</sup> FEMA gathered information about each sampled entity using publicly available information from the U.S. Census Bureau and online small business directories (e.g., Dunn and

Bradstreet, Manta.com). FEMA determined that 69 out of the 100 recipients (69 percent) met the definition of a small entity based on the population size of local governments (less than 50,000 population), or PNPs based on size standards set by the SBA.<sup>125</sup> FEMA identified 61 small entity recipients as local governments and identified 8 small entity recipients as PNPs. In an average year, FEMA approves 28,721 Public Assistance projects and of those, FEMA accordingly estimated small entities to account for 19,818 projects.

#### 4. A Description of the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Types of Professional Skills Necessary for Preparation of the Report or Record

FEMA proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. The proposed programmatic revisions to the collection of information include reporting alternate project legal consideration; adding deadlines for submitting certain supporting documentation and closeout certifications for project worksheets; and in the list of procedures that must be included in a State/Tribal Administrative Plan, adding requirements that recipients include timely closeout procedures and address staffing plans when updating their Administrative Plans. FEMA believes the professional skills typical of a person in an Emergency Management Director position are best suited for the preparation of the reports, forms, and other documentation.

#### 5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

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

#### 6. A Description of Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

FEMA proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. As

such, FEMA was unable to consider alternatives to the proposed rule that would minimize economic impact on small entities. However, FEMA is interested in the potential impacts of the proposed rule on small entities and requests public comment on these potential impacts. If you think that this rule would have a significant economic impact on you, your business, or your organization, please submit a comment to the docket as directed under the **ADDRESSES** caption, above. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you. FEMA will consider all comments received in the public comment process.

#### C. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency “shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).” Section 202 of the Act (2 U.S.C. 1532) further requires that the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector before promulgating, inter alia, any proposed rule that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. FEMA has determined, however, that it does not need to prepare an assessment for this proposed rule because it meets the criteria set forth in 2 U.S.C. 1503(4), which states, “This chapter shall not apply to . . . any provision in a proposed or final Federal regulation that . . . provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government.” Additionally, FEMA estimates this rule would not have an economic impact of \$100 million or more in any one year. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### D. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970, as amended June 3, 2023, by the Fiscal Responsibility Act) (42 U.S.C.

<sup>123</sup> See 44 CFR 206.207.

<sup>124</sup> FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula:  $n = N / (1 + N * e^2)$ . Therefore,  $287,214 / (1 + 287,214 * 0.1^2) = 100$  (rounded).

<sup>125</sup> See 13 CFR 121.201.

4321 *et seq.*) requires Federal agencies to consider the effects of their major proposed actions on the quality of the human environment. The Council on Environmental Quality's 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. Each agency can develop and use categorical exclusions (CATEXs) to cover major Federal actions that have been demonstrated to not typically trigger significant effects to the human environment. If an action does not qualify for a CATEX and has the potential to significantly affect the environment, Federal agencies develop environmental assessments (EAs) to evaluate those actions. At the end of the EA process, the agency will determine 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 if it fits one of the approved exclusion categories and there are no extraordinary circumstances.<sup>126</sup> 40 CFR 1501.4, 1507.3. This proposed rule falls within the scope of the U.S. Department of Homeland Security List of CATEXs, A3(b), (c), and (d).<sup>127</sup> In the instant rulemaking, proposed changes would (a) implement, without substantive change, statutory or regulatory requirements; (b) implement, without substantive change, procedures, manuals, and other guidance documents; or (c) interpret or amend an existing regulation without changing its environmental effect. The proposed changes are intended to clarify current policy and improve the administration of the Public Assistance program. The regulatory revisions in this proposed rule would have no significant effect on the human environment, are categorically excluded consistent with DHS procedure and NEPA regulations, and FEMA has not identified any extraordinary circumstances. Therefore, this rule does

<sup>126</sup> A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances, focuses on the action's potential effects and considers the environmental significance of those effects in terms of both context and intensity. See Department of Homeland Security Instruction Manual 023-01-001-01, Revision 01, Implementation of the National Environmental Policy Act, at V-5 to V-6 (Nov. 6, 2014), [https://www.dhs.gov/sites/default/files/publications/DHS\\_Instruction%20Manual%20023-01-001-01%20Rev%2001-508%20Admin%20Rev.pdf](https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001-508%20Admin%20Rev.pdf).

<sup>127</sup> *Id.* at A-1 to A-2.

not require the preparation of either an EA or an EIS as defined by NEPA.<sup>128</sup>

#### *E. National Historic Preservation Act of 1966*

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 their actions, referred to as an "undertaking," on any historic property listed, or eligible for listing, on the National Register of Historic Places. Section 106 requires Federal agencies to consult with any other 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 Federal agencies complete it prior to the approval of expenditure of any Federal funds for the undertaking. Subpart B of 36 CFR part 800 lays out a 4-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).

The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program. Pursuant to section 106 of the National Historic Preservation Act 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 part 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, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.

#### *F. Endangered Species Act*

The Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.*, mandates that Federal agencies determine whether

their proposed 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.<sup>129</sup>

To comply with section 7(a)(2) of the ESA, for every action that FEMA proposes to carry out, fund, or authorize, 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 proposed 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).

The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program. 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 activity. Per the ESA regulations, FEMA is not required to notify, and to consult with, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service for activities with a No Effect determination.<sup>130</sup>

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 proposed action on listed species and critical habitat. With few exceptions (such as emergencies) and as set forth in applicable statutes or regulations, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.<sup>131</sup>

#### *G. Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C.

<sup>129</sup> 16 U.S.C. 1538, 1539.

<sup>130</sup> See 50 CFR 402.13, 402.14.

<sup>131</sup> 50 CFR 402.13, 402.14.

<sup>128</sup> See *Id.* at V-4 to V-6.

3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number.

In this proposed rule, FEMA is seeking a revision to an existing collection of information: OMB Control Number 1660–0017. This proposed rule serves as the 60-day comment period for this collection pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

The proposed programmatic revisions to this collection of information are adding a requirement for respondents to identify legal considerations; in the list of procedures that must be included in a State/Tribal Administrative Plan, replacing management costs procedures with timely closeout procedures; adding a requirement that recipients address staffing plans when updating their Administrative Plans; and accounting for Tribal respondents for the Administrative Plan. FEMA estimates that these revisions will increase the annual cost to respondents by \$23,572 and increase annual burden hours by 436 hours.

Collection of Information

Title: Public Assistance Program.

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

OMB Number: 1660–0017.

Form Titles and Numbers: FEMA Form FF–104–FY–21–131 (formerly 009–0–49), Request for Public Assistance; FEMA Form FF–104–FY–21–132 (formerly 009–0–111), Quarterly Progress Reports; FEMA Form FF–104–FY–21–137 (formerly 009–0–123), Force Account Labor Summary Record; FEMA Form FF–104–FY–21–138 (formerly 009–0–124), Materials Summary Record; FEMA Form FF–104–FY–21–139 (formerly 009–0–125), Rented Equipment Summary; FEMA Form FF–104–FY–21–140 (formerly 009–0–126), Contract Work Summary; FEMA Form FF–104–FY–21–141 (formerly 009–0–127), Force Account Equipment Summary Record; FEMA Form FF–104–FY–21–135 (formerly 009–0–128), Applicant’s Benefits Calculation Worksheet; FEMA Form FF–104–FY–21–145 (formerly FF 009–0–141), FAC–TRAX System; FEMA Template FT–104–FY–21–100, Equitable COVID–19 Response and Recovery; Vaccine Administration Information; FEMA Form FF–104–FY–22–233, Organization Profile; FEMA Form FF–104–FY–22–234, Recipient Incident Information; FEMA Form FF–104–FY–22–235, Applicant Impact Survey; FEMA Form FF–104–FY–22–238, Pre-Approval Request; FEMA Form FF–104–FY–22–236, Impact List; FEMA Form FF–104–

FY–22–239, Project Application for Debris Removal; FEMA Form FF–104–FY–22–240, Project Application for Emergency Protective Measures; FEMA Form FF–104–FY–22–242, Project Application for Infrastructure Restoration; FEMA Form FF–104–FY–22–243, Project Application for Building Code and Floodplain Administration and Enforcement; FEMA Form FF–104–FY–22–244, Project Application for Management Costs; FEMA Form FF–104–FY–22–245, Damage Information; FEMA Form FF–104–FY–22–246, Environmental and Historic Preservation Addendum; FEMA Form FF–104–FY–22–247, Hazard Mitigation Addendum; FEMA Form FF–104–FY–22–241, Project Application for COVID–19; FEMA Form FF–104–FY–22–237, Donated Labor Sign-in; FEMA Form FF–104–FY–21–250, Tribal Administrative Plan; FEMA Form FF–104–FY–22–248, Time Extension; and FEMA Form FF–104–FY–22–249, State Administrative Plan.

Abstract: The information collected is utilized by FEMA to make determinations for Public Assistance awards based on the information supplied by the respondents.

Affected Public: State, Local, or Tribal Government.

Number of Respondents: 1,505.

Number of Responses: 635,269.

Estimated Total Annual Burden Hours: 341,635 hours.

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	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
Applicant .....	Applicant Impact Survey FEMA Form FF–104–FY–22–235.	60	1,000	60,000	0.1167	7,002	\$57.96	\$405,836
Applicant .....	Applicant’s Benefits Calculation Worksheet FEMA Form FF–104–FY–21–135 (formerly 009–0–128).	60	32	1,920	0.5	960	57.96	55,642
Applicant .....	Contract Information FEMA Form FF–104–FY–21–140 (formerly 009–0–126).	60	100	6,000	0.1833	1,100	57.96	63,756
Applicant .....	Damage Information FEMA Form FF–104–FY–22–245.	60	1,200	72,000	1.25	90,000	57.96	5,216,400
Applicant .....	Donated Labor Sign-in FEMA Form FF–104–FY–22–237.	60	10	600	0.0667	40	57.96	2,318
Applicant .....	Environmental and Historic Preservation Information Addendum* FEMA Form FF–104–FY–22–246.	0	0	0	0	0	0	0
Applicant .....	Equitable Vaccine Administration Information Submission Template FEMA Template FT–104–FY–21–100.	60	228	13,680	0.5	6,840	57.96	396,446
Recipient/ .....	FAC–TRAX System FEMA Form FF–104–FY–21–145 (formerly FF 009–0–141).	0	0	0	0	0	0	0
Applicant .....	Force Account Equipment Summary FEMA Form FF–104–FY–21–141 (formerly 009–0–127).	60	32	1,920	0.25	480	57.96	27,821
Applicant .....	Force Account Labor Summary Record FEMA Form FF–104–FY–21–137 (formerly 009–0–127).	60	32	1,920	0.5	960	57.96	55,642
Applicant .....	Hazard Mitigation Addendum* FEMA Form FF–104–FY–22–247.	0	0	0	0	0	0	0

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
Applicant .....	Impact List FEMA Form FF-104-FY-22-236.	60	1,000	60,000	0.5	30,000	57.96	1,738,800
Applicant .....	Materials and Summary Record FEMA Form FF-104-FY-21-138 (formerly 009-0-124).	60	32	1,920	0.25	480	57.96	27,821
Recipient/ .....	Organization Profile FEMA Form FF-104-FY-22-233.	60	1,000	60,000	0.3	18,000	57.96	1,043,280
Applicant .....	Pre-Approval Request FEMA Form FF-104-FY-22-238.	60	500	30,000	0.5	15,000	57.96	869,400
Applicant .....	Project Application for Building Code and Floodplain Management and Enforcement FEMA Form FF-104-FY-22-243.	60	5	300	0.2333	70	57.96	4,057
Applicant .....	Project Application for COVID-19 FEMA Form FF-104-FY-22-241.	60	50	3,000	0.3667	1,100	57.96	63,756
Applicant .....	Project Application for Debris Removal FEMA Form FF-104-FY-22-239.	60	1,000	60,000	0.75	45,000	57.96	2,608,200
Applicant .....	Project Application for Emergency Protective Measures FEMA Form FF-104-FY-22-240.	60	1,000	60,000	0.75	45,000	57.96	2,608,200
Applicant .....	Project Application for Infrastructure Restoration FEMA Form FF-104-FY-22-242.	60	1,200	72,000	0.75	54,000	57.96	3,129,840
Applicant .....	Project Application for Management Costs FEMA Form FF-104-FY-22-244.	60	1,000	60,000	0.2167	13,002	57.96	753,596
Applicant .....	Quarterly Progress Report FEMA Form FF-104-FY-21-132 (formerly 009-0-111).	60	4	240	0.6	144	57.96	8,346
Recipient .....	Recipient Incident Information FEMA Form FF-104-FY-22-234.	60	1	60	0.0833	5	57.96	290
Applicant .....	Rented Equipment Summary Record FEMA Form FF-104-FY-21-139 (formerly 009-0-125).	60	32	1,920	0.5	960	57.96	55,642
Applicant .....	Request for Appeals or Arbitrations & Recommendations/No Form.	56	9	504	3	1,512	57.96	87,636
Applicant .....	Request for Appeals or Arbitrations & Recommendations from Hurricanes Katrina or Rita/No Form.	4	5	20	3	60	57.96	3,478
Applicant .....	Request for Public Assistance FEMA Form FF-104-FY-21-131 (formerly 009-0-49).	60	1,000	60,000	0.1167	7,002	57.96	405,836
Recipient .....	State/Territory Administrative Plan FEMA Form FF-104-FY-22-249.	60	1	60	0.6	36	57.96	2,087
Applicant .....	Time Extension Request FEMA Form FF-104-FY-22-248.	60	120	7,200	0.4	2,880	57.96	166,925
Recipient .....	Tribe Administrative Plan FEMA Form FF-104-FY-22-250.	5	1	5	0.4167	2	57.96	116
Total .....		1,505		635,269		341,635		19,801,167

The term Recipient refers to States, Tribes, and Territories. The term Applicant refers to States, Tribes, Territories, and local governments and certain private non-profit organizations.

\* FEMA Form FF-104-FY-22-246, Environmental and Historic Preservation Addendum and FEMA Form FF-104-FY-22-247, Hazard Mitigation Addendum are addendums to the Project Applications. Burden hours for these addendums are included with the estimated burden of the applicable project application.

**Estimated Total Annual Respondent Cost:** The estimated annual cost to respondents for the hour burden is \$19,801,167.

**Estimated Respondents' Operations and Maintenance Costs:** There are no annual operations or maintenance costs associated with this information collection.

**Estimated Respondents' Capital and Start-Up Costs:** There are no annual capital or start-up costs associated with this information collection.

**Estimated Total Annual Cost to the Federal Government:** The estimated annual cost to the Federal Government is \$2,001,955.

**Comments**

The public may submit comments as indicated in the **ADDRESSES** caption above. FEMA solicits comments to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those

who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**H. Privacy Act/E-Government Act**

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A "record" is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited

to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.<sup>132</sup> 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 that 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 DHS policy, FEMA has completed a Privacy Threshold Analysis for this rule. DHS 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 Assessment (PIA) and an existing SORN:

DHS/FEMA/PIA-013 Grant Management Programs; and

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

The proposed 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.

#### *I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, 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 may 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.

Although Indian Tribal governments are potentially eligible applicants under the Public Assistance Program, FEMA has determined that this rule does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. The proposed revisions in this rule relating specifically to Indian Tribal governments are minor clarifying changes to reflect current practice.

There is no substantial direct compliance cost associated with this proposed rule. The Public Assistance program is a voluntary program available to eligible Tribal governments acting as a recipient, as well as State and local governments and PNP organizations. The Public Assistance program provides funding to applicants, including Tribal governments, in need of emergency and disaster response assistance. Indian Tribal governments acting as recipients already comply with certain conditions, including submitting an administrative plan and FEMA-Tribal Agreement, in order to receive Public Assistance funding. FEMA does not expect the regulatory changes in this proposed rule to disproportionately affect Indian Tribal governments acting as recipients.

#### *J. Executive Order 13132, Federalism*

Executive Order 13132, 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 reviewed this proposed rule under Executive Order 13132 and has concluded that it does not 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. Therefore, this proposed rule does not have federalism implications as defined by the Executive Order. This rulemaking would not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law. This rulemaking would amend a voluntary grant program that State, local, and Tribal governments and eligible PNP organizations may use to receive Federal grants to assist in the recovery from disasters. States are not required to seek grant funding, and this rulemaking does not limit their policymaking discretion.

#### *K. Executive Order 11988, Floodplain Management*

Executive Order 11988, 42 FR 26951 (May 25, 1977), as amended by Executive Order 13690, “Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input,” (80 FR 6425, Feb. 4, 2015) and Executive Order 14030, “Climate-Related Financial Risk,” (86 FR 27967, May 25, 2021), requires each Federal agency to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development

<sup>132</sup> See 5 U.S.C. 552a(a)(4).

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 to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The requirements of Executive Order 11988 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, the changes proposed in this rule would not affect floodplain management. The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program. 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, 8-step process for conducting floodplain management and wetland reviews. With few exceptions (such as emergencies) and as set forth in applicable statutes or regulations, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.

#### *L. Executive Order 11990, Protection of Wetlands*

Executive Order 11990, 42 FR 26961 (May 24, 1977), requires each Federal agency to provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the

proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental, and other pertinent factors.

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

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, the changes proposed in this rule would not affect land use or wetlands. The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program.

When FEMA undertakes specific actions that may affect wetlands, FEMA follows the procedures set forth in 44 CFR part 9 to ensure compliance with this Executive Order. These procedures include a specific, 8-step process for conducting floodplain management and wetland reviews. With few exceptions (such as emergencies) and as authorized in applicable statutes or regulations, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.

#### *M. Executive Orders 12898 and 14096, Environmental Justice*

Under Executive Orders 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," and 14096, "Revitalizing Our Nation's Commitment to Environmental Justice for All" (which builds upon Executive Order 12898<sup>133</sup>) agencies must, as appropriate and

<sup>133</sup> Exec. Order No. 12898 of Feb. 11, 1994 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), 59 FR 7629 (Feb. 16, 1994).

consistent with applicable law, identify, analyze, and address the disproportionate and adverse human health and environmental effects (including risks) and hazards of rulemaking actions and other Federal activities on communities with environmental justice concerns.<sup>134</sup>

This rulemaking would not result in disproportionate and adverse effects on human health or the environment. This rulemaking involves grant funding under the Public Assistance program, a program that provides funding to States, local governments, Tribal governments, and PNP organizations to assist them in their emergency response and disaster response and recovery efforts. It would 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 Public Assistance 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.

#### *N. OMB Circular A-119, Voluntary Consensus Standards*

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

Section 1235(b) of DRRRA amended section 406(e) of the Stafford Act to require FEMA fund repair, restoration, reconstruction, or replacement in conformity with

the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant design and establish minimum acceptable criteria for the design,

<sup>134</sup> For further information, including the definition of environmental justice, see Exec. Order No. 14096 of Apr. 21, 2023 (Revitalizing Our Nation's Commitment to Environmental Justice for All), 88 FR 25251 (Apr. 26, 2023).

construction, and maintenance of residential structures and facilities that may be eligible for assistance under [the Stafford] Act for the purposes of protecting the health, safety, and general welfare of a facility's users against disasters.

This rule proposes to codify this requirement in FEMA's regulations at 44 CFR 206.226(c)(1). FEMA's interim guidance on DRRA section 1235(b) provides more information on which voluntary consensus codes fall within the scope of this provision.<sup>135</sup>

*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 benefit-cost analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders. FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized.

This rule is not a "major rule" within the meaning of the CRA. It would not have an annual effect on the economy of \$100,000,000 or more, it would 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 would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

**List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

<sup>135</sup> Consensus-Based Codes, Specifications and Standards for Public Assistance, FEMA Recovery Interim Policy FP-104-009-11 Ver. 2.1, Appendix A (Dec. 20, 2019), available at [https://www.fema.gov/sites/default/files/2020-07/fema\\_DRRA-1235b-public-assistance-codes-standards-interim-policy.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1235b-public-assistance-codes-standards-interim-policy.pdf).

For the reasons discussed in the preamble, the Federal Emergency Management Agency proposes to amend 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).

**Subpart A—General**

- 2. In § 206.2:
  - a. Revise paragraphs (a)(4), (a)(6), (a)(10), (a)(14), (a)(15), (a)(18), (a)(19), (a)(20), and (a)(24);
  - b. Redesignate paragraphs (a)(26) and (a)(27) as (a)(28) and (a)(29), respectively; and
  - c. Add new paragraphs (a)(26) and (a)(27).

The revisions and additions read as follows:

**§ 206.2 Definitions.**

(a) \* \* \*

(4) *Concurrent, multiple major disasters:* In considering a request for an advance, the term concurrent multiple major disasters means major disasters that occur within a 12-month period immediately preceding the major disaster for which an advance of the non-Federal share is requested pursuant to section 319 of the Stafford Act.

(6) *Designated area:* Any emergency or major disaster-affected portion of a State that has been determined eligible for Federal assistance.

(10) *Federal agency:* Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but will not include the American National Red Cross.

(14) *Hazard mitigation:* Any cost-effective measure that will reduce the potential for damage to a facility from future disaster impacts.

(15) *Individual assistance:* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an

emergency. Such assistance may be provided directly by the Federal Government or through State, local, or Indian Tribal governments, or disaster relief organizations. For further information, see subparts D, E, and F of these regulations.

(18) *Mission assignment:* Work order issued by the Regional Administrator, Associate Administrator for the Office of Response and Recovery, or Administrator, to a Federal agency directing completion by that agency of a specified task and citing funding, other managerial controls, and guidance.

(19) *Private nonprofit organization:* Any nongovernmental agency or entity that currently has:

- (i) An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501(c), (d), or (e) of the Internal Revenue Code of 1986, as amended;
- (ii) Satisfactory evidence from the State or Indian Tribal government that the organization or entity is a nonprofit one organized or doing business under State or Tribal law; or
- (iii) If the organization is exempt from the requirement to apply for 501(c)(3) status and is exempt from requirements to apply for tax exempt status under applicable State or Tribal law, the organization must provide articles of association, bylaws, or other organizing documents indicating that it is an organized entity and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and State or Tribal law requirements.

(20) *Public Assistance:* Supplementary Federal assistance provided under the Stafford Act to State, local, and Indian Tribal governments, and certain private, nonprofit organizations other than assistance for the direct benefit of individuals and households. For further information, see subparts G (Public Assistance Project Administration), H (Public Assistance Eligibility), I (Public Assistance Insurance Requirements), J (Coastal Barrier Resources Act), K (Community Disaster Loans), and M (Minimum Standards) of this part. Fire Management Assistance Grants under section 420 of the Stafford Act are also considered Public Assistance; see part 204 of this subchapter.

(24) *State or Tribal emergency plan:* As used in section 401 or section 501 of the Stafford Act means the State or Tribal plan that is designated specifically for State or Indian Tribal



government level response to emergencies or major disasters and which sets forth actions to be taken by the State, Indian Tribal government, and local governments, including those for implementing Federal disaster assistance.

\* \* \* \* \*

(26) *Tribal Authorized Representative (TAR)*: The person empowered by the Tribal Executive to execute, on behalf of the Indian Tribal government, all necessary documents for disaster assistance.

(27) *Tribal Coordinating Officer*: The person appointed by the Tribal Executive to act in cooperation with the Federal Coordinating Officer to administer disaster recovery efforts.

\* \* \* \* \*

#### § 206.11 [Amended]

■ 3. Amend § 206.11 as follows:

■ a. Remove the word “shall” wherever it appears, and add in its place the word “will”.

■ b. In paragraph (b), before the words “or economic status” add “disability, English proficiency,”.

#### § 206.12 [Amended]

■ 4. Amend § 206.12 as follows:

■ a. In paragraph (a), remove the words “and other voluntary organizations” and add in their place the words “long-term recovery groups, domestic hunger relief organizations, and other relief or voluntary organizations”.

■ b. In paragraph (b), remove the words “the American Red Cross” and add in their place the words “the American National Red Cross”, and remove the words “and other voluntary organizations” and add in their place the words “long-term recovery groups, domestic hunger relief organizations, and other relief or voluntary organizations”.

■ c. Remove the word “shall” wherever it appears, and add in its place the word “will”.

#### Subpart C—Emergency Assistance

■ 5. In § 206.62, revise paragraphs (a), (b), (c), and (g) to read as follows:

#### § 206.62 Available assistance.

\* \* \* \* \*

(a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State, Indian Tribal government, and local emergency assistance efforts to save lives, protect property and public health

and safety, and lessen or avert the threat of a catastrophe;

(b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State, local, and Indian Tribal governments;

(c) Provide technical and advisory assistance to affected State, local, and Indian Tribal governments for:

(1) The performance of essential community services;

(2) Issuance of warnings of risks or hazards;

(3) Public health and safety information, including dissemination of such information;

(4) Provision of health and safety measures; and

(5) Management, control, and reduction of immediate threats to public health and safety;

\* \* \* \* \*

(g) Assist State, local, and Indian Tribal governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

#### Subpart G—Public Assistance Project Administration

■ 6. Revise § 206.200 to read as follows:

#### § 206.200 General.

(a) This subpart establishes procedures for the administration of Public Assistance awards approved under the provisions of the Stafford Act.

(b) The Stafford Act requires that FEMA deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations.

(c) The recipient and subrecipient must adhere to the requirements of the Stafford Act and to these regulations when administering Public Assistance awards.

(d) 2 CFR part 200 applies to all Public Assistance awards and to all recipients and subrecipients of Public Assistance awards except where its provisions are inconsistent with the Stafford Act or these regulations.

■ 7. Revise § 206.201 to read as follows:

#### § 206.201 Definitions used in this subpart.

*Applicant* means a State agency, Indian Tribal government, local government, or a private nonprofit organization or institution that owns or operates a private nonprofit facility as defined in § 206.221, submitting an application to the recipient for assistance under the Public Assistance program.

*Award* means the financial assistance that the recipient receives from FEMA.

The award is based on the total eligible Federal share of all approved projects.

*Facility* means building, structure, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

*Host-State*. A State or Indian Tribal government that by agreement with FEMA provides sheltering and/or evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a “Host-Tribe.”

*Impact-State*. The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to § 206.209.

*Indian Tribal government* means any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Permanent work* means work performed pursuant to section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5172.

*Predisaster design* means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

*Project* is a logical grouping of work required as a result of the declared major disaster or emergency. A project may include eligible work at several sites.

*Project approval* means the process in which the Regional Administrator, or designee, reviews a proposed project and approves the work and costs on a Project Application or related Project Applications.

*Project Application* is used to document the location, scope of work, cost or cost estimate, terms and conditions, and information required for approval. For permanent work, the form is also used to document damage description and dimensions.

*Recipient* means the government that receives an award directly from FEMA and which is accountable for the use of the funds provided. The recipient is the

entire legal entity even if only a particular component of the entity is designated in the award document. Except as provided in § 206.202(f), the State or Indian Tribal government for which the emergency or major disaster is declared is the recipient. However, an Indian Tribal government may choose under a declaration provided to the State to be either a recipient of FEMA, or a subrecipient of the State. If an Indian Tribal government elects to be a recipient of FEMA under a declaration provided to the State, it will assume the responsibilities of the “recipient” or “State” as described in this part with respect to administration of the Public Assistance program.

*Resiliency* means the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

*Resilient* means able to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

*Site* means an individual building, structure, location, or system section.

*Subaward* means an award of financial assistance provided by the recipient to a subrecipient.

*Subrecipient* means the government or other legal entity that receives a subaward from the recipient and which is accountable to the recipient for the use of the funds provided.

■ 8. In § 206.202, revise paragraphs (a) through (e), (f)(1), and (f)(2) to read as follows:

**§ 206.202 Application procedures.**

(a) *General*. This section describes the policies and procedures that FEMA uses to process Public Assistance awards to a recipient. The recipient is responsible for processing subawards to subrecipients pursuant to 44 CFR part 206, the recipient’s own policies and procedures, and the applicable requirements of 2 CFR part 200.

(b) *Recipient*. The recipient is responsible for administering all funds provided under the Public Assistance program. The recipient’s responsibilities include:

(1) Ensuring that all potential applicants are aware of available assistance under the Public Assistance program;

(2) Providing support for project identification and development activities, including site inspections and scope of work and cost development;

(3) Providing technical advice and assistance to eligible subrecipients;

(4) Informing subrecipients of the status of applications for Public

Assistance funding, including FEMA’s approval of the Project Application and the process for disbursement of funds; and

(5) Submitting documents necessary for the approval of subawards.

(c) *Request for Public Assistance (Request)*. The recipient must submit a completed *Request* to the Regional Administrator, or designee, for each Public Assistance applicant. The recipient must submit *Requests* to the Regional Administrator no later than 30 calendar days after the area is designated in an emergency or major disaster declaration.

(d) *Project Applications*.

(1) An applicant’s authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs or cost estimates for disaster-related damage. The applicant, assisted by the recipient or FEMA as appropriate, must prepare a Project Application for each project.

(2) Within 90 calendar days following FEMA’s approval of the *Request for Public Assistance*, the applicant must identify and report all impacts the applicant proposes be included on the Project Applications.

(3) For work not completed prior to or during the project development period, the applicant must conduct any site inspections necessary to validate incident impacts and obtain all information necessary to complete a detailed description of the impacts. Within 30 calendar days following a site inspection or 120 calendar days following FEMA’s approval of the *Request for Public Assistance*, whichever is later, the applicant must also provide the recipient and FEMA all other documentation necessary to determine eligible work and costs.

(4) When the estimated cost of work at a site is less than \$3,900 that work is not eligible and FEMA will not approve funding for the site. This minimum threshold amount will be reviewed annually and may be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(e) *Award notification*.

(1) The recipient must complete and send to the Regional Administrator, or designee, a Standard Form (SF) 424, Application for Federal Assistance, and a SF 424D, Assurances for Construction Programs, before FEMA obligates any Public Assistance funds to the recipient. Upon request and after receipt of the SF 424 and SF 424D, the Regional Administrator, or designee, may obligate funds to the recipient based on the

approved Project Applications. The recipient will then pay claims in accordance with § 206.206 based on the Project Applications approved for each subrecipient.

(2) The recipient will notify the subrecipient of FEMA’s approval of a subaward.

(f) \* \* \*

(1) *Host-State/Tribe Evacuation and/or Sheltering*.

(i) *General*. A host-State/Tribe is eligible for an award under sections 403 or 502 of the Stafford Act for sheltering and/or evacuation support when an impact-State/Tribe requests direct Federal assistance for sheltering and/or evacuation support pursuant to § 206.209. To receive this award, a host-State/Tribe must enter into a FEMA-Host-State/Tribe Agreement, amend its State/Tribal Administrative Plan pursuant to § 206.208, and submit a Standard Form SF 424 Application for Federal Assistance directly to FEMA to apply for reimbursement of eligible costs for evacuating and/or sheltering individuals from an impact-State/Tribe. Upon award, the host-State/Tribe assumes the responsibilities of the “recipient” under this part with respect to its award.

(ii) *Force Account Labor Costs*. For the performance of eligible evacuation and sheltering support under sections 403 or 502 of the Stafford Act, the straight-time salaries and benefits of a host-State/Tribe’s permanently employed personnel are eligible for reimbursement. This is an exception to § 206.228(b).

(2) *Time limitations*. The Regional Administrator, or designee, may extend the time limit shown in paragraphs (c) and (d) of this section when the recipient justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the recipient’s and subrecipient’s control.

■ 9. Revise § 206.203 to read as follows:

**§ 206.203 Federal funding for large and small projects.**

(a) *Cost sharing*. All projects approved under FEMA Public Assistance awards will be subject to the cost sharing provisions established in the FEMA-State/Tribe Agreement and the Stafford Act.

(b) *Large projects*. When the approved estimate of eligible costs for an individual project is \$1,000,000 or greater, Federal funding will equal the Federal share of the actual eligible costs documented by a recipient. This minimum threshold amount will be reviewed annually and may be adjusted to reflect changes in the Consumer Price

Index for All Urban Consumers published by the Department of Labor.

(c) *Small projects.* When the approved estimate of costs for an individual project is less than \$1,000,000, Federal funding will equal the Federal share of the approved estimate of eligible costs. This amount will be reviewed annually and may be adjusted as indicated in paragraph (b) of this section.

(d) *Applicability date.* The dollar threshold provided in paragraphs (b) and (c) of this section applies to project applications that have not been obligated as of August 3, 2022 for major disasters and emergencies declared on or after March 13, 2020.

**§§ 206.204 through 206.209 [Redesignated as §§ 206.205 through 206.210]**

■ 10. Redesignate §§ 206.204 through 206.209 as §§ 206.205 through 206.210, respectively.

■ 11. Add new § 206.204 to read as follows:

**§ 206.204 Funding options—improved projects and alternate projects.**

(a) *Improved projects—(1) Purpose.* A subrecipient may request an improved project when it desires to restore the predisaster function of a damaged facility and make improvements. Improved projects may only be approved for permanent work.

(2) *Approval.* The subrecipient must obtain the recipient’s written approval prior to the start of project construction. The recipient must notify the Regional Administrator, or designee, of its approval in writing.

(3) *Deadlines.* Work completion deadlines, set forth in § 206.205, apply to the completion of the improved project.

(4) *Funding.* Public Assistance funding for improved projects will be limited to the Federal share of the approved estimate of eligible costs that would be associated with repairing or replacing the damaged facility to its predisaster design, or to the actual costs of completing the improved project, whichever is less.

(b) *Alternate projects—(1) Purpose.* An alternate project may be requested in any case where a subrecipient determines that the public welfare

would not be best served by restoring the function of a disaster-damaged public or private nonprofit facility. An alternate project may only be approved for permanent work.

(2) *Approval.* Prior to the start of construction on any alternate project, the recipient must submit for approval by the Regional Administrator, or designee, the following: a description of the project(s); schedule of work, including starting date and targeted completion date; the projected cost of the project(s); and supporting documentation identifying any environmental or historic preservation issues and any other legal considerations. An applicant must receive approval from the Regional Administrator prior to the start of construction on an alternate project.

(3) *Deadlines.* Work completion deadlines, set forth in § 206.205, apply to the completion of alternate projects.

(4) *Funding—(i) Amount.* Public Assistance funding for alternate projects for damaged public and private nonprofit facilities is limited to the Federal share of the FEMA-approved estimate of the total eligible cost of repairing, restoring, reconstructing, or replacing the original facility to its predisaster function, or to the actual costs of completing the alternate project, whichever is less.

(ii) *Use of funds—(A) Public facilities.* Funds awarded for alternate projects may be used to repair or expand public facilities, construct new public facilities, purchase eligible capital equipment, fund hazard mitigation measures, and demolish the original damaged facility when demolition is an associated expense of the alternate project. Funds awarded for alternate projects may not be used to pay the non-Federal share of any project, nor any operating expense. Alternate project funds awarded to a State, local, or Indian Tribal government under this paragraph may not be used for any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)), or for any uninsured public facility located in a special flood hazard area identified by

the Administrator of FEMA under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

(B) *Private Nonprofit Facilities.* Funds awarded for alternate projects may be used to repair or expand other eligible private nonprofit facilities owned or operated by the subrecipient; construct new eligible facilities to be owned or operated by the subrecipient; purchase equipment needed to repair, restore, expand, or construct an eligible facility; to fund hazard mitigation measures that the subrecipient determines to be necessary to meet a need for the subrecipient’s eligible services and functions in the area affected by the major disaster; and demolish the original structure when demolition is an associated expense of the alternate project. These funds may not be used to pay the non-Federal share of any project, nor any operating expense. Alternate project funds made available to a subrecipient under this paragraph may not be used for any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)), or any uninsured private nonprofit facility located in a special flood hazard area identified by the Administrator of FEMA under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

■ 12. Amend newly redesignated § 206.205 as follows:

■ a. Revise paragraph (c), the introductory text to paragraph (d), paragraph (d)(2), the introductory text to paragraph (e)(1), paragraphs (e)(2), and (f); and

■ b. Add paragraph (e)(3).

The revisions and addition read as follows:

**§ 206.205 Project performance.**

\* \* \* \* \*

(c) *Time limitations for completion of work—*

(1) *Deadlines.* The work completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under the award.

**COMPLETION DEADLINES**

Type of work	Months
Debris removal and emergency protective measures .....	6
Permanent work .....	18

(2) *Exceptions—*

(i) FEMA and the recipient may impose lesser deadlines for the

completion of work under paragraph

(c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subrecipient, the recipient may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris removal and emergency protective measures, with the exception of extensions of temporary relocation deadlines, which require prior FEMA approval. The recipient may extend the deadlines under paragraph (c)(1) of this section for an additional 30 months, on a project-by-project basis, for permanent work. However, all extensions of deadlines for temporary relocation require prior FEMA approval.

(d) *Requests for time extensions.* A request for a time extension beyond the recipient's authority must be submitted by the recipient to the Regional Administrator, or designee, prior to the expiration of the last approved time extension and must include the following:

\* \* \* \* \*

(2) A detailed written justification for the delay and a projected completion date. The justification must be based on extenuating circumstances beyond the recipient's and subrecipient's control. The Regional Administrator must review the request and make a determination. The Regional Administrator will notify the recipient of his/her determination in writing. If the Regional Administrator approves the request, the approval notice will reflect the new completion date and any other requirements the Regional Administrator may determine necessary to ensure that the new completion date is met. If the Regional Administrator denies the time extension request, FEMA may reimburse the recipient for eligible project costs incurred only up to the latest approved completion date. If the work is not completed, no Federal funding will be provided for that project unless the completed work is distinct from the uncompleted work.

(e) \* \* \*

(1) *Categories.* During the execution of approved work, a subrecipient may find that the actual project costs exceed the approved Project Application estimates. Such cost overruns normally fall into the following three categories:

\* \* \* \* \*

(2) *Large projects.* The subrecipient must evaluate each cost overrun and may, when justified, submit a request to the recipient for additional funding. The request for additional funding should be made as soon as practicable to allow FEMA or the recipient the opportunity

to inspect the uncompleted project to validate that the additional costs are eligible. All requests for approval of additional funding must contain sufficient documentation to support the eligibility of all claimed work and costs. The recipient will make a written recommendation, and must provide it with the subrecipient's request and all supporting documentation, to the Regional Administrator, or designee. The Regional Administrator will notify the recipient in writing of the final determination.

(3) *Small projects.* FEMA will not normally review an overrun for an individual small project. When a subrecipient discovers a significant overrun related to the total final cost for all of its small projects, the subrecipient may submit a request for additional funding. The request must be made within 90 calendar days following the completion of the last of a subrecipient's small projects.

(f) *Progress reports.* The recipient must submit a quarterly progress report to the Regional Administrator, or designee. The Regional Administrator and the recipient must agree upon the date for submission of the first report. Progress reports must describe the status of open large projects.

■ 13. Revise newly redesignated § 206.206 to read as follows:

**§ 206.206 Payment of claims.**

(a) *Small Projects.* FEMA will make payment of the Federal share of small projects to the recipient upon approval of the Project Application. The recipient will make payment of the Federal share to the subrecipient, consistent with State or Tribal laws, as soon as practicable after Federal approval of funding. The recipient must certify that all small projects were completed in accordance with FEMA approvals and that the recipient contribution to the non-Federal share, as specified in the FEMA-State Agreement or FEMA-Tribal Agreement, has been made to each subrecipient, if applicable. The recipient's certification must be made within 90 calendar days of the last approved small project completion date of record. The amount spent by a subrecipient on small projects is not required to be specified in the recipient's certification. The Federal payment for small projects will not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) *Large projects*—(1) The subrecipient must submit cost documentation for each large project to

the recipient for final payment within 90 calendar days of completion of the approved scope of work for that Project Application. The recipient must submit cost documentation for each large project to the Regional Administrator as soon as practicable, but not later than 90 calendar days after the subrecipient has submitted documentation for final payment. The recipient must make an accounting to the Regional Administrator of eligible costs for each approved large project. In submitting the accounting the recipient must certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement or FEMA-Tribal Agreement, and that payments for that project have been made in accordance with 2 CFR 200.305.

(2) The Regional Administrator, or designee, will review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the Regional Administrator may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the Regional Administrator determines that eligible costs vary from the approved estimate, the Regional Administrator will adjust the funding to reflect the actual eligible costs as necessary.

(3) The recipient will make payment of the Federal share to the subrecipient as soon as practicable after the Federal obligation of funding, consistent with State or Tribal laws.

(4) The Regional Administrator, or designee, may extend the time limits shown in paragraphs (1), (2) and (3) of this section when the recipient justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the recipient's and subrecipient's control.

**§ 206.206 [Redesignated as § 206.207 and amended]**

■ 14. In newly redesignated § 206.207, amend paragraph (a) as follows:

■ a. Remove the words “*Applicant* has the same meaning as the definition at § 206.201(a)” and add in their place the words “*Applicant* has the same meaning as the definition at § 206.201”; and

■ b. Remove the words “*Recipient* has the same meaning as the definition at § 206.201(m)” and add in their place the words “*Recipient* has the same meaning as the definition at § 206.201”.

■ 15. Amend newly redesignated § 206.208 by revising paragraph (a), the introductory text to paragraph (b), and paragraphs (b)(1), (b)(1)(i), (b)(1)(iii)(G), (H), and (K); (b)(3) and (4); and (c) to read as follows:

**§ 206.208 Administrative and audit requirements.**

(a) *General.* 2 CFR part 200 sets forth uniform administrative requirements for Federal awards, including certain provisions that apply to all awards and subawards in this part.

(b) *State/Tribal administrative plan—*

(1) The recipient must develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the recipient agency or agencies which will have the responsibility for program administration.

\* \* \* \* \*

(iii) \* \* \*

(G) Compliance with the applicable administrative requirements of 2 CFR part 200 and 44 CFR part 206;

(H) Compliance with the applicable audit requirements of 2 CFR 200.500–521;

\* \* \* \* \*

(K) Ensuring the timely closing out of subawards, subrecipients, and awards.

\* \* \* \* \*

(3) The recipient must submit, and receive approval from the Regional Administrator, or designee, of an administrative plan before FEMA will approve awards for an emergency or major disaster. The recipient must submit an updated plan to the Regional Administrator annually. In each disaster for which Public Assistance is available, the Regional Administrator will request the recipient to prepare any amendments required to meet current policy guidance, or necessary to address the recipient staffing plan for administering the Public Assistance program for the particular disaster.

(4) The recipient must ensure that the approved administrative plan is incorporated into the State or Tribal emergency plan.

(c) *Audit—*(1) *Non-Federal audit.* For recipients or subrecipients, requirements for a non-Federal audit are contained in 2 CFR 200.500–521.

(2) *Federal audit.* In accordance with 2 CFR 200.500–521, FEMA may elect to conduct a Federal audit of the award or any of the subawards.

■ 16. Amend newly redesignated § 206.209 by revising paragraphs (a), (b) introductory text, (b)(1) introductory text, (b)(1)(i) through (iii), (b)(2) and (3), and (c) through (e) to read as follows:

**§ 206.209 Direct Federal assistance.**

(a) *General.* When a State or Indian Tribal government lacks the capability to perform or to contract for eligible emergency protective measures or debris removal under sections 402, 403, 407, 502(a)(1), (4) through (7), or 503 of the Stafford Act, it may request that the work be accomplished by a Federal agency. In addition, assistance is also available under section 418 of the Stafford Act for emergency communications, and section 419 of the Stafford Act for emergency public transportation. Direct Federal assistance is subject to the cost sharing provisions outlined in § 206.203(a) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance must be submitted by the recipient to the Regional Administrator and must include:

(1) A written agreement that the State or Indian Tribal government will:

(i) Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and must indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement or FEMA-Tribal Agreement; and

\* \* \* \* \*

(2) A certification and explanation from the State or Indian Tribal government that the State, local, or Indian Tribal government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in paragraph (b)(1)(i) and (ii) of this section, in the event that a State or Indian Tribal government is legally unable to provide the written agreement.

(c) *Implementation—*(1) If FEMA approves the request, FEMA may perform or contract for the work itself, or will, as appropriate, issue a mission assignment to the appropriate Federal agency. The mission assignment to the Federal agency will define the scope of eligible work, the estimated cost of the

eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

(2) The Regional Administrator will not approve FEMA funding for any part of the requested work that falls within the more specific statutory authority of another Federal agency. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(3) If an impact-State/Tribe requests assistance in providing evacuation and sheltering support outside an impact-State/Tribe, FEMA may directly reimburse a host-State/Tribe for such eligible costs through an award to a host-State/Tribe under an impact-State/Tribe's declaration, consistent with § 206.202(f)(1). FEMA may grant an award to a host-State/Tribe when FEMA determines that a host-State/Tribe has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State/Tribe, and a host-State/Tribe agrees in writing to provide such support to an impact-State/Tribe.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 calendar days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the Regional Administrator may extend this time limitation.

(e) *Project management—*(1) The performing Federal agency must ensure that the work is completed in accordance with the Regional Administrator's approved scope of work, costs, and time limitations. The performing Federal agency must also keep the Regional Administrator and recipient advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State, Tribal, and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports will be signed by a representative of the performing Federal agency and the State or Indian Tribal government. Once the final eligible cost is determined (including agency overhead), FEMA will bill the State or Indian Tribal government for the non-Federal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement or FEMA-Tribal Agreement, as applicable.

(2) Pursuant to the agreements provided in the request for assistance the recipient will assist the performing Federal agency in all State, Indian Tribal government, and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

**§ 206.209 [Redesignated as § 206.210 and amended]**

- 17. Amend newly redesignated § 206.210 as follows:
  - a. In the paragraph (b) introductory text, remove the word “hereinafter”;
  - b. In paragraphs (b) and (d), remove “§ 206.206” wherever it appears and add in its place “§ 206.207”;
  - c. In paragraph (e)(4), remove the words “Project Worksheet(s)” and add in their place the words “Project Application(s)”;
  - d. In paragraph (k)(3), remove the word “shall” and add in its place the word “will”.

**Subpart H—Public Assistance Eligibility**

**§ 206.220 [Amended]**

- 18. Amend § 206.220 as follows:
  - a. In the first sentence, remove the words “public assistance” and add in their place the words “Public Assistance”;
  - b. In the second sentence, add the word “the” after the words “must also conform to”.
- 19. Revise § 206.221 to read as follows:

**§ 206.221 Definitions.**

*Assistance animal* means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates identified symptoms or effects of a person’s disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

*Educational institution* means:

- (1) Any elementary school as defined by the Elementary and Secondary Education Act of 1965, as amended, at title 20 U.S.C. 7801(19); or
- (2) Any secondary school as defined by the Elementary and Secondary Education Act of 1965, as amended, at title 20 U.S.C. 7801(45); or
- (3) Any institution of higher education as defined by the Higher Education Act of 1965, as amended, at title 20 U.S.C. 1001(a).

*Force account* means an applicant’s own labor forces and equipment.

*Household pet* means a domesticated animal that is traditionally kept in the home for personal rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.

*Immediate threat* means:

- (1) Imminent danger requiring an urgent response to address serious risks to lives or public health and safety, or to avoid damage from an incident; or
- (2) The threat to lives or public health and safety, or of damage from an incident that can reasonably be expected to occur within 5 years of the declared incident—for flood incidents specifically, the threat from a 5-year flood (a flood that has a 20 percent chance of occurring in any given year).

*Improved property* means a facility or item of equipment that was built, constructed, or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes such as for crops and livestock is not improved property.

*Private nonprofit facility* means any private nonprofit educational (without regard to the religious character of the facility), center-based childcare, utility, irrigation, emergency, medical, rehabilitational, or custodial care facility, including a facility for older adults or people with disabilities, and other facility providing essential social services to the general public.

(1) *Educational facility* means a private nonprofit facility consisting of classrooms plus related buildings, supplies, equipment, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes.

(2) *Center-based childcare* means a private nonprofit facility that the State or Tribal Department of Children and Family Services, Department of Human Services, or similar agency, recognizes as a licensed childcare facility.

(3) *Utility* means a private nonprofit facility consisting of buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities. Private nonprofit irrigation facilities are not “utilities” and are defined below.

(4) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

(5) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(6) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(7) *Rehabilitational facility* means a facility that provides alcohol and drug treatment and other rehabilitational services.

(8) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(9) *Essential social service facility* means a private nonprofit facility that is a museum, zoo, performing arts facility, community arts center, community center, library, homeless shelter, senior citizen center, rehabilitation facility, shelter workshop, food bank, broadcasting facility, house of worship, or a facility that provides health and safety services of a governmental nature. Such a facility must provide essential social services to the general public.

*Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1986, as amended;

(2) Satisfactory evidence from the State or Indian Tribal government that the organization or entity is a nonprofit one organized or doing business under State or Tribal law; or

(3) If the organization is exempt from the requirement to apply for 501(c)(3) status and is exempt from requirements to apply for tax exempt status under applicable State or Tribal law, the organization must provide articles of association, bylaws, or other organizing documents indicating that it is an organized entity and a certification that

it is compliant with Internal Revenue Code section 501(c)(3) and State or Tribal law requirements.

Public entity means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

Public facility means the following facilities owned by a State, local, or Indian Tribal government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, as defined in the Americans with Disabilities Act. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

Standards means codes, specifications or standards required for the construction of facilities.

20. Amend § 206.222 by revising the introductory text, and paragraphs (b) and (c) to read as follows:

206.222 Applicant eligibility.

The following entities are eligible to apply for assistance under the State or Tribal Public Assistance award:

\* \* \* \* \*

(b) Private nonprofit organizations or institutions which own or operate a private nonprofit facility as defined in § 206.221.

(c) Indian Tribal governments or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

21. Amend § 206.223 as follows:

- a. Revise paragraphs (a)(1) through (3), and (b) and (c);
b. Remove paragraph (d);
c. Redesignate paragraph (e) as paragraph (d); and
d. Add new paragraph (e).

The revisions and addition read as follows:

206.223 General work eligibility.

(a) \* \* \*

(1) Be required as the result of the emergency or major disaster incident;

(2) Be located within the designated area of an emergency or major disaster declaration, except that sheltering, evacuation, and emergency operation center activities may be located outside the designated area; and

(3) Be the legal responsibility of the eligible applicant.

(b) Private nonprofit. For work to be eligible, it must be performed on a private nonprofit facility as defined in § 206.221 that is owned or operated by an organization meeting the definition of a private nonprofit organization as defined in § 206.221.

(c) Rural community, unincorporated town or village, or other public entity facilities. Work performed on these facilities may be eligible when an application is submitted through the State or a political subdivision of the State.

\* \* \* \* \*

(e) Duplication of Benefits. The subrecipient must notify the recipient of any benefits anticipated from any source for the same purpose as FEMA funding. The recipient has a continuing obligation to notify FEMA of any benefits available to the subrecipient that address the same work. Recipients and subrecipients must pursue recovery of all available benefits, including those from potential third-party liability. FEMA will disallow or recoup from the recipient amounts that would constitute a duplication of benefits.

22. Amend § 206.224 by revising the introductory text to paragraph (a) and paragraphs (a)(4) and (b) to read as follows:

206.224 Debris removal.

(a) Public interest. When FEMA determines that it is in the public interest to remove debris and wreckage from publicly and privately owned lands and waters, the Regional Administrator may provide assistance for the removal of such debris. Debris removal is in the public interest when it is necessary to:

\* \* \* \* \*

(4) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Regional Administrator extends this period.

(b) Debris removal from private property. When it is in the public interest for an eligible applicant to

remove debris from private property in urban, suburban, and rural areas, debris removal is eligible. This may include large lots but does not include areas used for crops and livestock or unused areas.

\* \* \* \* \*

23. Amend § 206.225 as follows:

- a. Revise the section heading;
b. Revise paragraphs (a)(2), (a)(3)(i) and (ii), and (c) and (d);
c. In paragraph (b), remove the word "events" and add in its place the word "incidents"; and
d. Add paragraphs (e) and (f).

The revisions and addition read as follows:

206.225 Emergency protective measures.

(a) \* \* \*

\* \* \* \* \*

(2) In determining whether emergency protective measures are required, the Regional Administrator may require certification by local, State, Tribal, or Federal officials that a threat exists, including identification and evaluation of the threat and a recommendation of the emergency protective measures necessary to eliminate, lessen, or avert the threat.

(3) \* \* \*

(i) Eliminate, lessen, or avert immediate threats to life, public health, or safety; or

(ii) Eliminate, lessen, or avert immediate threats of significant damage to improved public or private property through measures that are cost-effective.

\* \* \* \* \*

(c) Emergency communications. FEMA may provide direct Federal assistance in accordance with § 206.209 for effective emergency communications necessary for the purpose of carrying out disaster relief functions as deemed appropriate. This includes furnishing appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, disaster relief functions. Emergency communications are intended to supplement but not replace normal communications that remain operable after a major disaster.

(d) Emergency public transportation. FEMA may provide direct Federal assistance in accordance with § 206.209 for emergency public transportation to meet emergency needs and to provide transportation, including but not limited to paratransit services for individuals with disabilities, to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible. Such transportation is intended to

supplement but not replace predisaster transportation facilities that remain operable after a major disaster.

(e) *Rescue, care, shelter, and essential needs of household pets and service and assistance animals.* The rescue, care, shelter, and provision of essential needs to household pets and service and assistance animals is eligible. The work, tasks, or support provided or performed by a service or assistance animal must be directly related to the individual's disability.

(f) *Temporary relocation.* Temporary relocation may be available for applicants that own or operate a public or private nonprofit facility, including administrative, support, and ancillary facilities essential to the operation of the facility, even if not contiguous, that provides an eligible essential community service. Essential community services are those services performed by governmental entities or private nonprofit organizations that are necessary to save lives, protect and preserve property or public health and safety, or preserve the proper function and health of the community at large. Essential community services include, but are not limited to, emergency services (police, fire protection, and rescue), emergency medical care, prisons, education, election and polling, and utilities. This assistance may be eligible emergency protective measures if: (1) the facility was damaged to the extent that it cannot be occupied safely, and restoration cannot be completed without suspending operations of the facility for an unacceptable period of time; or (2) the facility was not damaged but it lacks a critical utility or operational item (such as potable water, electricity, or road access) and a temporary facility would restore services to the community in less time than the completed restoration of the disrupted critical utility or operational item at the current facility.

■ 24. Revise and republish § 206.226 as follows:

**§ 206.226 Restoration of damaged facilities.**

Work to restore (repair, reconstruct, or replace) eligible facilities on the basis of the predisaster design, as defined in § 206.201, of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Assistance under other Federal agency (OFA) programs.* Assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an incident which is declared a major disaster.

(b) *Beaches.*

(1) Replacement of sand on an unimproved natural beach is not eligible.

(2) Improved beaches. Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(c) *Codes and standards.*

(1) *FEMA codes, specifications, and standards.* Minimum codes, specifications, and standards for repair and replacement of eligible facilities are the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of facilities for the purpose of protecting the health, safety and general welfare of the facilities' users against disasters.

(2) *Other codes and standards.* For the costs of Federal, State, Tribal, and local repair or replacement codes and standards which change the predisaster construction of a facility and are different, but not less stringent, than the applicable code, specification, or standard established under paragraph (1) to be eligible, the codes and standards must:

(i) Apply to the type of restoration required;

(ii) Be appropriate to the predisaster use of the facility;

(iii) Be found reasonable, in writing, and formally adopted and implemented by the State, local, or Indian Tribal government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration;

(iv) Apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility; and

(v) Be in effect and enforced at the time of a disaster.

(d) *Disaster damage.* Damage that is eligible for restoration under this section must be a result of the major disaster. Deterioration, loss of useful life, or aging of a facility are not disaster damage.

(e) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(f) *Hazard mitigation.* The Regional Administrator may approve or require cost-effective hazard mitigation measures for restoration of facilities.

The cost of any approved hazard mitigation measures or requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(g) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(h) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a recipient must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

(i) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility), sewer services, wastewater treatment, communications (including broadcast and telecommunications), education, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

(j) *Relocation.*

(1) The Regional Administrator may approve funding for and require restoration of a damaged facility that is not repairable, per paragraph (k)(1) of this section, at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by applicable statutory or regulatory requirements; and

(iii) The overall project is cost-effective.

(2) When relocation is required by the Regional Administrator, eligible work includes land acquisition and the construction of ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Administrator, no future FEMA funding for repair or replacement



of a facility at the original site will be approved, except those facilities that conform with an open space use in accordance with 44 CFR part 80.

(4) When relocation is required by the Regional Administrator, and, instead of relocation, the applicant requests approval of an alternate project under § 206.204(b), eligible costs will be limited to the estimate of restoration at the original location excluding hazard mitigation measures, or actual project costs, whichever is less.

(5) If relocation of a facility is not feasible or cost-effective, the Regional Administrator will disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, the applicant may apply for an alternate project.

(k) *Repair vs. replacement.*

(1) A facility is considered repairable when the estimated repair cost for disaster damage does not exceed 50 percent of the cost of replacing the facility to its predisaster design and function, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (k)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs must be limited to the less expensive of repairs or replacement.

(3) An exception to the limitation in paragraph (c)(2)(ii) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(l) *Restrictions—(1) Converted facilities.* If a facility was being used for purposes other than those for which it was designed, the eligible cost of restoration will be limited to the lesser cost of restoring the facility to its original design or to the design for the purpose the facility was being used prior to the disaster.

(2) *Inactive facilities.* A facility that was not in active use at the time of the disaster is not eligible except in those instances where the facility was only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an

approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

**§ 206.227 [Amended]**

■ 25. Amend § 206.227 as follows:

■ a. Remove the word “snowstorms” and add in its place the word “snowfall”; and

■ b. Remove the word “event” and add in its place the word “incident”.

■ 26. Revise and republish § 206.228 to read as follows:

**§ 206.228 Allowable costs.**

General policies for determining allowable costs are established in 2 CFR 200, subpart E, subject to the more specific provisions set forth in this part and the Stafford Act. Further exceptions to those policies as allowed in 2 CFR 200, subpart E and 2 CFR 200.102 are explained below.

(a) *Eligible Force Account Equipment Costs.* Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work must be provided in accordance with the following guidelines:

(1) *Rates established under State or Tribal guidelines.* In those cases where an applicant uses reasonable rates which have been established or approved under State or Tribal guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of \$75 or less must be based on such rates. Reimbursement for equipment which has an hourly rate in excess of \$75 will be determined on a case by case basis by FEMA.

(2) *Rates established under local guidelines.* Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(3) *No established rates.* The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

(b) *Force Account Labor Costs.* The straight- or regular-time salaries and

benefits of a recipient's or subrecipient's permanently employed personnel are:

(1) Eligible in calculating the cost of eligible permanent repair, restoration, and replacement of facilities under section 406 of the Stafford Act;

(2) Eligible in calculating the cost of eligible debris removal under sections 407 and 502(a)(5) of the Stafford Act; and

(3) Not eligible in calculating the cost of other eligible emergency protective measures under sections 403 and 502 of the Stafford Act, except for those costs associated with host state evacuation and sheltering, as established in § 206.202.

**Subpart K—Community Disaster Loans**

■ 27. Amend § 206.361 as follows:

■ a. In paragraphs (a), (d), (e), and (g), remove the words “Disaster Assistance Directorate” and add in their place the words “Recovery Directorate” wherever they appear;

■ b. In paragraph (e), remove the word “extensions” and add in its place the word “extension”;

■ c. In paragraph (f), remove the word “shall” and add in its place the word “must” wherever it appears, and remove the word “nonFederal” and add in its place the word “non-Federal”;

■ d. In paragraphs (g) and (h), remove the word “shall” and add in its place the word “will” wherever it appears;

■ e. In paragraph (h), remove the word “grants” and add in its place the word “awards”; and

■ f. Revise paragraph (b).

The revision reads as follows:

**§ 206.361 Loan program.**

\* \* \* \* \*

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but must not exceed \$5 million; or, if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, the amount of the loan must not exceed 50 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and must not exceed \$5 million. The term *fiscal year* as used in this subpart means the local government's fiscal year.

\* \* \* \* \*

**§ 206.363 [Amended]**

■ 28. Amend § 206.363 as follows:

- a. In paragraph (a)(1), remove the words “Disaster Assistance Directorate” and add in their place the words “Recovery Directorate”; and
- b. In paragraph (b)(1), remove the words “or emergency” from the first sentence.
- 29. Amend § 206.364 as follows:
  - a. In paragraph (a)(1):
    - 1. Remove the word “shall” and add in its place the word “must” wherever it appears;
    - 2. In the first sentence, remove the word “GAR” and add in its place the words “Governor’s Authorized Representative (GAR) or Tribal Authorized Representative (TAR)”; and
    - 3. In the third sentence, remove the word “GAR” and add in its place the words “GAR or TAR”.
  - b. In paragraph (a)(2), remove the words “Governor’s Authorized Representative” and add in their place the words “GAR or TAR”;

- c. In paragraphs (b)(1), (b)(3), and (b)(4), remove the word “shall” and add in its place the word “must” wherever it appears;
- d. In paragraphs (c)(1), (c)(2), (d)(2)(i) and (d)(2)(ii), remove the words “Disaster Assistance Directorate” and add in their place the words “Recovery Directorate” wherever they appear;
- e. In paragraphs (c)(1) and (c)(2), remove the word “shall” and add in its place the word “will” wherever it appears;
- f. In paragraph (c)(2), after the word “sixty”, add the word “calendar”; and
- g. Revise paragraph (d)(1)(ii).  
The revision reads as follows:

**§ 206.364 Loan application.**

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*   *   *   *   *
  (d) * * *
  (1) * * *
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(ii) 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but will not exceed \$5 million; or if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, 50 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and will not exceed \$5 million. The term fiscal year as used in this subpart means the local government’s fiscal year.

\* \* \* \* \*

**Deanne Criswell,**  
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