

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 206

[Docket ID FEMA-2024-0024]

RIN 1660-AB15

Hazard Mitigation Grant Program Application Period Extension

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: The Federal Emergency Management Agency (FEMA) is revising its regulations to extend the Hazard Mitigation Grant Program's application period. This revision will allow FEMA to approve additional projects and offer applicants additional time for project approvals meant to address the effects of climate change and other unmet community mitigation needs.

DATES: This rule is effective August 15, 2024.

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

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SUPPLEMENTARY INFORMATION:

1. Legal and Factual Background

FEMA's Hazard Mitigation Grant Program

FEMA is responsible for administering and coordinating the Federal Government's response to disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("Stafford Act").¹ There are two types of disaster declarations provided for in the Stafford Act: emergency declarations² and major

disaster declarations.³ Following a major disaster declaration, FEMA may provide several different types of discretionary assistance to applicants such as funding under its Hazard Mitigation Grant Program (HMGP) which is authorized under Section 404 of the Stafford Act. 42 U.S.C. 5170c; 44 CFR 206.40.

HMGP "ensures that State, local, Tribal and territorial governments have the financial opportunity to plan for and implement mitigation measures that reduce the risk of loss of life and property from future natural disasters during the reconstruction process following a disaster."⁴ HMGP funding is time-limited; "the award period of performance for HMGP begins with the opening of the application period and ends no later than 48 months from the close of the application period." *Id.*

Under HMGP, FEMA "may contribute up to 75% of the cost of hazard mitigation measures which the President has determined are cost-effective and which substantially reduce the risk of future damage, hardship, loss, or suffering in any area affected by a major disaster."⁵ States (which includes Territories)⁶ and Indian Tribal Governments are eligible applicants for HMGP funding, and upon award, will become recipients.⁷ State agencies, local

the threat of a catastrophe in any part of the United States."

³ 42 U.S.C. 5170; 5122 (defining "major disaster" as "any natural catastrophe (including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.").

⁴ Federal Emergency Management Agency, Hazard Mitigation Assistance Program and Policy Guide ("HMAPP"), Part 10.A.4, p. 28, March 20, 2023, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

⁵ Stafford Act, *supra* note 1, section 404 (codified as amended at 42 U.S.C. 5170c(a)); the statute caps the maximum amount of financial assistance that FEMA may provide for hazard mitigation, providing that the total of contributions "shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,000,000,000" of the estimated aggregate amount of grants to be made under the disaster declaration.

⁶ "State" means any State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. 42 U.S.C. 5122(4).

⁷ 44 CFR 206.431 at definitions of "Applicant" and "Recipient"

governments, private nonprofit organizations, and Indian Tribal Governments⁸ are eligible subapplicants for HMGP who, and, upon subaward, will become subrecipients.⁹

The HMGP lists all relevant program definitions at 44 CFR 206.431. In HMGP, a "grant application" is a request to FEMA for HMGP funding by a State or Tribal Government that will act as a recipient. 44 CFR 206.431. The "subaward application" is the request to the recipient for HMGP funding by the eligible subrecipient. 44 CFR 206.431; 44 CFR 206.436(a). The "grant award" is the total Federal and non-federal contributions to complete the approved scope of work.¹⁰ The "subaward" means an award provided by a pass-through entity to a subrecipient for the subrecipient to carry out as part of the Federal award. 44 CFR 206.431; 44 CFR 206.436(a). The "recipient" is the State or Indian Tribal Government that receives a Federal award directly from FEMA.¹¹

Hazard Mitigation Grant Program Application Procedures

HMGP applicants follow the procedures set forth at § 206.436. Upon identification of mitigation measures, the applicant submits an HMGP application to the FEMA Regional Administrator. The HMGP application includes a comprehensive narrative identifying intended mitigation projects, State or local contacts, project locations, description and cost estimates, an analysis of the cost-effectiveness of the mitigation measures, work schedules, justification for selection, relevant project management information and subrecipients. *See* 44 CFR 206.436(c). Applications for HMGP serve to identify the specific mitigation measures for which HMGP funding is requested. Applicants must submit all local HMGP applications (also known as subaward applications or subapplications) and funding requests to the FEMA Regional Administrator within 12 months of the date of the disaster declaration.¹² Under § 206.436(e), however, applicants/recipients may request that the Regional Administrator extend the application time limit by additional 30-to-90-day

⁸ Indian Tribal Governments have the option to apply as an applicant or a subapplicant. 44 CFR 206.431 at definition of "Indian Tribal Government." An Indian Tribal Government acting as recipient will assume the responsibilities of a State, as described in 44 CFR part 206, subpart N, for the purposes of administering the grant. 44 CFR 206.431 at definition of "Recipient."

⁹ 44 CFR 206.431 at definition of "Subrecipient."

¹⁰ *Id.* at definition of "Grant award."

¹¹ 44 CFR 206.431 at definition of "Recipient."

¹² *See* 44 CFR 206.436.

¹ Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288 (1974) (codified as amended at 42 U.S.C. 5121 *et. seq.*) ("Stafford Act").

² Stafford Act, *supra* note 1, section 501 (codified as amended at 42 U.S.C. 5191(a)); *see also* Stafford Act, *supra* note 1, section 102 (codified as amended at 42 U.S.C. 5122) which defines "emergency" as "any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert

increments, not to exceed a total of 180 days.

The amount of HMGP funding available to the applicant is based on the estimated total Federal assistance for the major disaster declaration, subject to the sliding scale formula that FEMA provides for disaster recovery. 44 CFR 206.432(b). FEMA establishes the amount of funding available for HMGP for each disaster¹³ (called the HMGP “ceiling”) at 12 months after the date of the disaster declaration (called the HMGP “lock-in”).¹⁴ FEMA provides two point-in-time estimates prior to the 12-month lock-in (at 35 days and 6 months) so that the applicant has some approximation of funding availability for each disaster in order to solicit and select among subapplications for mitigation projects. *Id.* When major fluctuations of projected disaster costs occur, FEMA, at the request of the applicant, may conduct an additional review after the 12-month lock-in. If the resulting review shows that the amount of funds available for HMGP is different than previously calculated, the final lock-in amount will be adjusted accordingly. *Id.*

2. Public Support & Need for Rule Change

FEMA stakeholders have identified the length of the application period and the inability to re-open the application period once it has closed as barriers to applying for assistance under HMGP.¹⁵

¹³ The maximum amount of financial assistance that FEMA may provide for HMGP is based on the amount of the grants FEMA projects it will provide under the major disaster declaration. Specifically, the amount of contributions “shall not exceed 15 percent for amounts not more than \$2,000,000,000, 10 percent for amounts of more than \$2,000,000,000 and not more than \$10,000,000,000, and 7.5 percent on amounts of more than \$10,000,000,000 and not more than \$35,333,000,000” of the estimated aggregate amount of grants to be made under the disaster declaration. 42 U.S.C. 5170c(a).

¹⁴ Federal Emergency Management Agency, *Hazard Mitigation Assistance Program and Policy Guide* (“HMAPPG”), Part 10.A.4, pp. 199–200, March 20, 2023, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

¹⁵ See, e.g., www.regulations.gov, Docket ID FEMA–2022–0023 at FEMA–2022–0023–0014 (comment from Texas Division of Emergency Management suggesting that FEMA remove the statutory requirement that FEMA will only consider an extension to the application deadline if the applicant’s inability to meet the deadline must have resulted from the event leading to the major disaster declaration. TDEM notes “[t]here are many legitimate extenuating circumstances that could lead a state to miss an application deadline that aren’t directly caused by the declared disaster.”); at FEMA–2022–0023–0032 (comment from Iowa Homeland Security and Emergency Management noting more time might be necessary for projects if a State experiences back to back disaster declarations); at FEMA–2022–0023–0034 (comment from the City of New Orleans argues that not

Specifically, State, local, Tribal, and territorial (SLTT) stakeholders have indicated they would benefit from additional time to develop quality applications and identified lack of resources, staff, and technical expertise necessary to prepare quality applications in a timely manner, resource challenges in trying to apply for assistance while also managing the response and recovery from a major disaster, failing to have a set HMGP ceiling established until the 12-month mark when the applications are due, and cumulative disasters as circumstances that further exacerbate the challenges to applying for assistance. *Id.*

Among the feedback received, SLTT entities indicated a need for allowing FEMA to extend or reopen the application period after it closes when disaster assistance recalculations potentially result in increased lock-in ceilings.¹⁶ Between October 1, 2019, and January 1, 2023, applicants submitted 75 requests, out of a total of 171 applications, for extensions beyond the 180 days Regional Administrators are permitted to authorize. Based on analysis of historical data from FEMA’s

allowing applicants to submit projects after the application period closes creates a strain on applicants to have ready to go project ideas in the near-term recovery period); at FEMA–2022–0023–0038 (comment from New York State Hazard Mitigation arguing that FEMA should be incorporating flexibility into the application process, particularly when FEMA and/or other disasters are the sole reasons for not being able to meet the 12 month deadline, noting that “[i]n a perfect world, a 12 month application period seems more than sufficient, but taking into account impacts from one disaster occurring while dealing with another disaster and adding 2 more disasters within the 12 month period plus annual FEMA competitive programs that all impact the same groups makes this an impossibility.”); at FEMA–2022–0023–0053 (comment from Louisiana Governor’s Office of Homeland Security and Emergency Preparedness arguing that a State/ jurisdiction can face significant challenges when back to back events occur, stating it is “unrealistic to assume that the impacts from one event are not compounded by each subsequent event, affecting overlapping regions of the State, and further stressing State and local capacity” and further stating that “FEMA should provide flexibility to extend and in some cases re-open an application period when a lock-in recalculation is made, especially when that recalculation comes at the end of the application period, and especially when the increase is substantial” because applicants need sufficient time to develop and submit quality applications.)

¹⁶ See Docket ID FEMA–2022–0025 (containing comments from the Ohio Emergency Management Mitigation Branch, “. . . [w]hat is the purpose of re-calculating the ceiling amount after the application period has closed if FEMA cannot extend the application period and make the funds available to states and communities?”; see also, FEMA–2022–0023–0038 (containing comments from the New York State Hazard Mitigation that FEMA should incorporate flexibility in its lock in ceiling process).

NEMIS database,¹⁷ from 2013–2022, 26.0 percent of applicants submit their applications within 12 months or less, 16.0 percent of applicants request extensions and submit their applications between 12–15 months, 31.3 percent of applicants request extensions and submit their applications between 15–18 months, and 26.7 percent of applicants are unable to complete their applications within the 18 months allowable under the regulations.

FEMA has statutory authority to waive administrative conditions that would prevent applicants from receiving assistance if the inability to meet such conditions is the result of the major disaster. See 42 U.S.C. 5141. FEMA has used this authority to grant extensions beyond 18 months to those applicants who can demonstrate they are unable to meet the deadline as a result of the major disaster. From 2013–2022, for disasters that required extensions beyond the regulatorily-provided 18 months, the average amount of additional time approved by FEMA is approximately 11.6 months; however, this amount includes several major disasters with extraordinary circumstances that require significantly more time to address than typical disasters. The median amount of additional time, which provides a more realistic snapshot, is approximately 6.1 months.

FEMA establishes the amount of funding available for HMGP for each disaster at 12 months after the date of the disaster declaration. 42 U.S.C. 5170c(a). The 12-month application deadline currently in regulation does not provide sufficient time for applicants to submit their applications. In light of the public participation referenced throughout¹⁸ and resultant

¹⁷ The National Emergency Management Information System (NEMIS) is a FEMA-wide system that allows FEMA and its partners to carry out emergency management missions for the United States, its Territories, and its Tribal Agencies.

¹⁸ See, e.g., www.regulations.gov, Docket ID FEMA–2022–0023 at FEMA–2022–0023–0014 (comment from Texas Division of Emergency Management suggesting that FEMA remove the statutory requirement that FEMA will only consider an extension to the application deadline if the applicant’s inability to meet the deadline must have resulted from the event leading to the major disaster declaration. TDEM notes “[t]here are many legitimate extenuating circumstances that could lead a state to miss an application deadline that aren’t directly caused by the declared disaster.”); at FEMA–2022–0023–0032 (comment from Iowa Homeland Security and Emergency Management noting more time might be necessary for projects if a State experiences back to back disaster declarations); at FEMA–2022–0023–0034 (comment from the City of New Orleans argues that not allowing applicants to submit projects after the application period closes creates a strain on

data analytics research discussed in Regulatory Analysis “B. Executive Orders 12866, ‘Regulatory Planning and Review’ and 13563, ‘Improving Regulation and Regulatory Review,’” FEMA now moves to address these identified challenges.

3. Discussion of Rule Change

FEMA is amending § 206.436 to extend the HMGP’s application period and reopen the registration period under limited circumstances. FEMA is revising § 206.436(d), “Application submission time limit,” to extend the initial deadline for applicants to submit local HMGP applications and funding requests from 12 months to 15 months from the date of disaster declaration. FEMA’s historical data shows that 42 percent of applicants are able to submit applications within 15 months (26.0 percent who are able to meet the current 12-month deadline + 16 percent who are able to request an extension and submit by the 15-month extended deadline). FEMA’s historical data also shows that setting the initial deadline at 18 months will increase this number by 31.3 percent. FEMA is extending the initial deadline to 15 months instead of 18 months (or longer) to ensure that it is setting an achievable deadline while still maintaining its commitment to timely and effective grants management. The additional 3 months also provides applicants time to receive the 12-month lock in amount and make educated adjustments to the amount of funding they are applying for. This would lessen the administrative burden placed on HMGP recipients and FEMA as it would

applicants to have ready to go project ideas in the near-term recovery period); at FEMA–2022–0023–0038 (comment from New York State Hazard Mitigation arguing that FEMA should be incorporating flexibility into the application process, particularly when FEMA and/or other disasters are the sole reasons for not being able to meet the 12 month deadline, noting that “[i]n a perfect world, a 12 month application period seems more than sufficient, but taking into account impacts from one disaster occurring while dealing with another disaster and adding 2 more disasters within the 12 month period plus annual FEMA competitive programs that all impact the same groups makes this an impossibility.”); at FEMA–2022–0023–0053 (comment from Louisiana Governor’s Office of Homeland Security and Emergency Preparedness arguing that a State/ jurisdiction can face significant challenges when back to back events occur, stating it is it is “unrealistic to assume that the impacts from one event are not compounded by each subsequent event, affecting overlapping regions of the State, and further stressing State and local capacity” and further stating that “FEMA should provide flexibility to extend and in some cases re-open an application period when a lock-in recalculation is made, especially when that recalculation comes at the end of the application period, and especially when the increase is substantial” because applicants need sufficient time to develop and submit quality applications.)

require fewer application extension requests and responses.

FEMA is making several revisions to § 206.436(e), “Extensions.” Currently, § 206.436(e) provides that an applicant may, with justification, request that the Regional Administrator extend the application time limit by 30 to 90 day increments, not to exceed a total of 180 days. FEMA is revising § 206.436(e) by adding introductory text to state that upon receiving a written request from the applicant, FEMA may extend the application submission timeline as described in new paragraphs (e)(1) and (2). New paragraph (e)(1) retains the language currently in paragraph (e), except that FEMA is increasing 90 days to 120 days and increasing 180 days to 240 days. FEMA is also changing the word “recipient” to “applicant” in the last sentence for accuracy, as “applicant” is an entity applying to FEMA for funding; it is only upon award that the applicant becomes the recipient.

New paragraph (e)(2) provides that FEMA will only consider requests for extensions beyond 240 days for extenuating circumstances outside of the applicant’s control. Such requests must be submitted to the Regional Administrator and must include justification. FEMA is adding new paragraph (e)(2) because it understands that extenuating circumstances outside of the applicant’s control might prevent the applicant from submitting its application within the 240-day timeframe. FEMA is therefore allowing requests for extensions as a matter of fairness but is requiring such extensions to be coordinated between the FEMA region and FEMA Headquarters and requiring justification to ensure that no application period is extended indefinitely. As described in FEMA’s Hazard Mitigation Assistance Program and Policy Guide, a recipient’s extension request must (1) describe the extenuating circumstances that prevent the recipient from meeting that application period deadline, (2) document how the recipient implemented HMGP consistent with its Administrative Plan, (3) provide an implementation strategy and goals to use any remaining assistance (including an assessment of the additional time requested and an updated Administrative Plan), and (4) identify any technical assistance that can assist in addressing resource gaps and/or is needed to successfully implement the program.¹⁹

¹⁹ HMAPP, Part 10.A.10, p. 208–209, Mar. 20, 2023, available at <https://www.fema.gov/sites/>

As noted throughout, FEMA stakeholders have identified the length of the application period and the inability to reopen the application period once it has closed as barriers to applying for assistance under HMGP. They have indicated that additional time to develop applications would allow them to not only submit more applications, but better, more complete applications as well.²⁰ In response, FEMA is adding a new paragraph (f) to allow FEMA to reopen application periods on a limited basis. This paragraph, entitled “Reopening of application period,” provides that FEMA’s Assistant Administrator for the Mitigation Directorate may reopen a closed application period for up to 180 days under two circumstances. (FEMA is limiting its ability to reopen a closed application period to 180 days to ensure this remains a limited authority). The first circumstance, addressed in paragraph (f)(1), “Recalculation of assistance,” will allow FEMA to reopen a closed application period if FEMA approves a recalculation of assistance under § 206.432 and an applicant requests to reopen the application period within 60 days of FEMA’s recalculation approval.

As stated above, the amount of available HMGP funding is based on a percentage of the estimated total Federal assistance for each disaster declaration. 42 U.S.C. 5170c; 44 CFR 206.432(b). FEMA establishes the HMGP lock-in 12 months after the disaster declaration. *Id.* In circumstances when a major disaster results in significant fluctuations of projected or actual costs, FEMA, at the recipient’s request, may change the “lock-in” amount if the projections or actuals used to determine it were inaccurate enough that the change would be material. *Id.* However, FEMA currently cannot reopen the application period after it has closed even if there has been an increase to the ceiling amount of assistance. *Id.* This causes issues for applicants because “lock-in” recalculations can greatly increase the amount of additional HMGP funding but often occur close to the end of, or even outside of, the application period, leaving applicants without additional time to apply for that extra funding.

FEMA is adding new paragraph (f)(1) to allow FEMA to reopen a closed application period to address this issue.

default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

²⁰ See Docket ID: FEMA–2022–0023–0034 (comment from the City of New Orleans argues that not allowing applicants to submit projects after the application period closes creates a strain on applicants to have ready to go project ideas in the near-term recovery period).

FEMA is requiring applicants to submit such requests within 60 days of FEMA's recalculation to ensure that submissions are timely and to prevent an applicant from requesting a reopening after an extended period of time has passed. The second circumstance, addressed in paragraph (f)(2), "Appeal," will allow FEMA to reopen a closed application period if FEMA grants an appeal under § 206.440 for an application extension denial after an application period is closed. Currently, if FEMA grants an appeal for an application extension denial, FEMA lacks the authority to reopen the application period for that applicant. This results in an inequitable scenario where the applicant wins its appeal but is deprived of a "remedy," which effectively renders the appeal meaningless. Allowing FEMA to reopen the application period for an applicant whose appeal it has granted would enable FEMA to provide all applicants a more effective and equitable appeals process.

FEMA will redesignate current paragraph (f), "FEMA approval," as paragraph (g). In new paragraph (g), FEMA will make nonsubstantive revisions such as changing the word "State" to "applicant" for greater accuracy, as well as minor grammatical edits to incorporate the active voice. Lastly, FEMA will redesignate current paragraph (g), "Indian Tribal recipients," as paragraph (h).

4. Regulatory Analysis

A. Administrative Procedure Act

The Administrative Procedure Act (APA) generally requires agencies to publish a notice of proposed rulemaking in the **Federal Register** and provide interested persons the opportunity to submit comments. *See* 5 U.S.C. 553(b) and (c). The APA provides an exception to this prior notice and comment requirement for matters relating to public property, loans, grants, benefits, or contracts. 5 U.S.C. 553(a)(2).

FEMA's HMGP program is a grant program through which FEMA obligates funding to State, local, Tribal, and territorial governments, as well as

eligible private nonprofit organizations, for post-disaster hazard mitigation measures that reduce the risk of, or increase resilience to, future damage, hardship, loss or suffering in any area affected by a major disaster, or any area affected by a fire for which assistance was provided under section 420 of the Stafford Act. Because this rule relates to FEMA's obligation of grant funding under the HMGP program, it is exempt from notice and comment rulemaking under the APA. In addition to the grants exemption previously noted, this rulemaking serves to increase flexibility in the administration of this mitigation grant program.

While FEMA asserts this rule is exempt from notice and comment procedures, the agency acknowledges its general policy to provide for public participation in rulemaking.²¹ FEMA has retained its discretion to depart from this policy as circumstances warrant. 44 CFR 1.3(c). Extending the HMGP application period warrants such a departure from notice and comment rulemaking, because the effort is a result of public comment. FEMA has already received comments from numerous stakeholders in response to a publication of the Hazard Mitigation Assistance (HMA) Program and Policy Guide for public comment²² expressing concern regarding the challenges they encounter in meeting the current HMGP deadlines²³ and supporting the

regulatory changes in this rulemaking. This rule does not impose any additional requirements on applicants; rather, in response to public comment requesting additional flexibilities in the HMGP,²⁴ it increases flexibility for applicants by allowing more opportunities for them to develop and improve their grant applications to address the effects of climate change and other unmet mitigation needs.

(comment from Texas Division of Emergency Management suggesting that FEMA remove the statutory requirement that FEMA will only consider an extension to the application deadline if the applicant's inability to meet the deadline must have resulted from the event leading to the major disaster declaration. TDEM notes "[t]here are many legitimate extenuating circumstances that could lead a state to miss an application deadline that aren't directly caused by the declared disaster."); at FEMA-2022-0023-0032 (comment from Iowa Homeland Security and Emergency Management noting more time might be necessary for projects if a State experiences back to back disaster declarations); at FEMA-2022-0023-0034 (comment from the City of New Orleans argues that not allowing applicants to submit projects after the application period closes creates a strain on applicants to have ready to go project ideas in the near-term recovery period); at FEMA-2022-0023-0038 (comment from New York State Hazard Mitigation arguing that FEMA should be incorporating flexibility into the application process, particularly when FEMA and/or other disasters are the sole reasons for not being able to meet the 12 month deadline, noting that "[i]n a perfect world, a 12 month application period seems more than sufficient, but taking into account impacts from one disaster occurring while dealing with another disaster and adding 2 more disasters within the 12 month period plus annual FEMA competitive programs that all impact the same groups makes this an impossibility."); at FEMA-2022-0023-0053 (comment from Louisiana Governor's Office of Homeland Security and Emergency Preparedness arguing that a State/jurisdiction can face significant challenges when back to back events occur, stating it is "unrealistic to assume that the impacts from one event are not compounded by each subsequent event, affecting overlapping regions of the State, and further stressing State and local capacity" and further stating that "FEMA should provide flexibility to extend and in some cases re-open an application period when a lock-in recalculation is made, especially when that recalculation comes at the end of the application period, and especially when the increase is substantial" because applicants need sufficient time to develop and submit quality applications.)

²⁴ *Id.*

²¹ 44 CFR 1.3(a). Until recently, FEMA waived the exemption afforded to grant programs under the APA and treated its programs as if they were subject to traditional notice and comment requirements. On March 3, 2022, FEMA published a final rule clarifying its position regarding notice and comment rulemaking for its grant programs. *See* 87 FR 11971, Mar. 3, 2022. FEMA determined that removal of the waiver of the exemption streamlined the regulations and ensured that the agency retained the flexibility to utilize a range of public engagement options in advance of rulemaking where appropriate. FEMA noted that it would retain its general policy in favor of public participation in rulemaking but would retain discretion to depart from this policy as circumstances warrant.

²² 87 FR 52016; HMAPP, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

²³ *See, e.g.,* www.regulations.gov, Docket ID FEMA-2022-0023 at FEMA-2022-0023-0014

Finally, FEMA asserts this rule provides necessary relief for the public that should not be delayed. Delayed effective dates are provided to give the public a reasonable time to prepare to comply with a rule. The APA generally requires that substantive rules incorporate a 30-day delayed effective date. 5 U.S.C. 553(d). However, the APA simultaneously provides an exception to the 30-day delayed effective date for rules which grant or recognize an exemption or relieve a restriction.²⁵ 5 U.S.C. 553(d)(1). This rule relieves a restriction on the amount of time HMGP applicants have to develop and submit mitigation project applications and is a result of public comment.

In response to a March 2023 update to and publication of the Hazard Mitigation Policy and Program Guide,²⁶ FEMA received comments from Iowa Homeland Security and Emergency Management,²⁷ the Texas Division of Emergency Management,²⁸ New York State Hazard Mitigation,²⁹ the Louisiana Governor's Office of Homeland Security and Emergency Preparedness,³⁰ and the City of New Orleans,³¹ all calling for additional time and flexibilities in the HMGP application process. In response to this feedback, FEMA ran a query of HMGP disaster application duration periods and found a need to extend the HMGP application period. This discussion is found in the regulatory analysis section below. This final rule will allow applicants and subapplicants more time to develop and submit additional mitigation project applications to address climate change and other unmet mitigation needs, relieving the restriction from which public commenters requested relief.

B. Executive Orders 12866, "Regulatory Planning and Review" and 13563, "Improving Regulation and Regulatory Review"

Executive Orders 12866 ("Regulatory Planning and Review") as amended by Executive Order 14094 (Modernizing Regulatory Analysis), 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, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Management and Budget (OMB) has not designated this rule a significant regulatory action under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, OMB has not reviewed this regulatory action.

The following paragraphs explain the need for the updated regulation, the affected population, and the benefits.

Need for Updated Regulation

Through HMGP, FEMA provides financial assistance to States, Territorial, and Tribal governments and thereafter funds may be distributed to local authorities or certain private nonprofit organizations for post disaster hazard mitigation measures that reduce the risk of, or increase resilience to, future damage, hardship, loss or suffering in any area affected by a major disaster. FEMA's current 12-month HMGP application deadline in regulation does not provide sufficient time for applicants to submit their applications resulting in frequent requests for application period extensions. Additionally, FEMA currently lacks the ability to re-open closed HMGP application periods when additional funding becomes available after the period closes or when an applicant's extension appeal is granted by FEMA. In these cases, FEMA's inability to re-open application periods prevents HMGP funds from helping communities rebuild in a way that mitigates future disaster losses.

To assess the need for changes to the existing application period authorities, FEMA ran a query of application period durations for the 689 disasters declared during the 10-year period from 2013 to 2022. It found that:

- Only 26 percent of applicants (179 of 689) were able to submit all subapplications within the base 12-month application period;
- 16 percent of applicants (111 of 689) were able to submit their applications after 12 months and within 15 months;
- 31.3 percent of applicants (215 of 689) were able to submit their applications after 15 months and within 18 months, only requiring an extension from the Regional Administrator; and,

- 26.7 percent (184 of 689 applicants) needed extensions beyond 18 months from FEMA Headquarters to be able to submit all subapplications. Currently, the only existing extension authority from Headquarters to issue application extensions is Section 301 of the Stafford Act.

During this 10-year period, the average amount of additional time approved by FEMA beyond the regulatorily provided 18 months is approximately 11.6 months, which was heavily influenced by several major disasters with extraordinary circumstances, including major disaster Hurricanes Harvey, Irma, and Maria in 2017. The median amount of additional time was 6.1 months. This data shows that the current application period extension allowances are not enough for many applicants.

The Figure 1 graph shows application period extension length by disaster over the 10-year period analyzed. The dark portion of the x-axis labeled "Regional Extension" shows disasters where the recipient requested an extension from the Regional Administrator and the light portion of the x-axis labeled "Headquarters Extension" shows extension requests from Headquarters. FEMA excluded approximately 70 major disasters with extensions cumulatively greater than 460 days from the graph below because including these outliers would affect the scale and make it difficult to display the plateaus at 90 days (representing a total application period of 15 months) and 180 days (representing a total application period of 18 months).³² There are also smaller plateaus at 270 and 365 days (representing application periods of 21 and 24 months, respectively) due to Headquarters extensions. These plateaus show the amount of time frequently requested by HMGP recipients and granted by FEMA. FEMA is using this information to update § 206.436(d)–(e) by:

- Increasing the base application period by 3 months: from 12 to 15 months. This would decrease the percentage of recipients that require a Regional or Headquarters extension by 16 percent (111 of 689).
- Lengthening the Regional Administrator extension authority from 180 days (6 months) to 240 days (8 months). This would decrease the percentage of recipients that require Headquarters extensions by 10.7 percent

³² FEMA excluded 70 major disasters with extensions cumulatively greater than 460 days. These data outliers had extraordinary circumstances that required significantly more time to address and therefore do not represent typical disasters.

²⁵ See *Indep. U.S. Tanker Owners Comm. v. Skinner*, 884 F.2d 587, 591 (D.C. Cir. 1989) (holding where rule relieves restriction, agency need not make explicit claim in published rule of its right to waive 30-day waiting period).

²⁶ 87 FR 52016; HMAPP, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

²⁷ FEMA-2022-0023-0032.

²⁸ FEMA-2022-0023-0014.

²⁹ FEMA-2022-0023-0038.

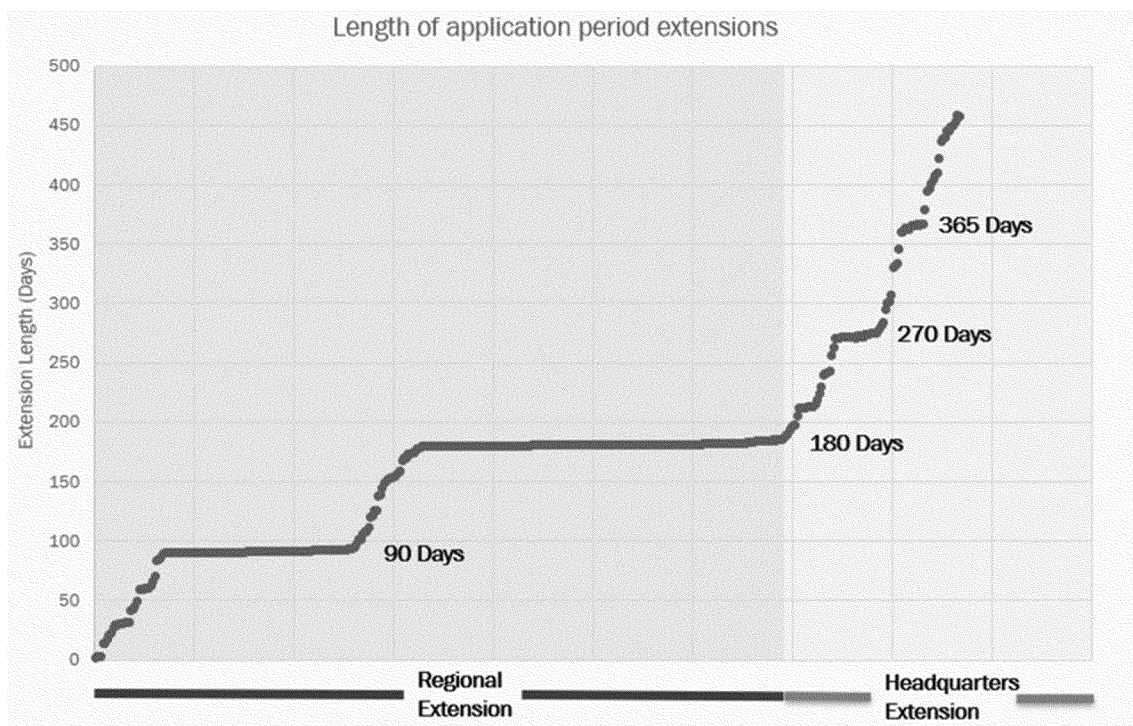
³⁰ FEMA-2022-0023-0053.

³¹ FEMA-2022-0023-0034.

(from 26.7 percent to 16 percent of disaster application periods). Only 16 percent would require an extension

beyond what the Regional Administrator could grant.

Figure 1. Length of Application Period Extensions for Regions and Headquarters



The additional 3 months gained from changing the application period from 12 to 15 months will give HMGP recipients time to receive the 12-month lock-in from FEMA and make educated adjustments to the amount of funding they have applied for. This would lessen the administrative burden placed on HMGP recipients and FEMA as it would require fewer application extension requests and responses.

The 15-month application period allows FEMA to balance the need to provide assistance quickly with ensuring appropriate oversight of application periods that exceed this period. FEMA Headquarters will retain the ability to issue consistent determinations on additional application period requests for major disasters with extraordinary circumstances. It ensures that recipients have adequate time to submit applications while simultaneously obligating funds at an acceptable rate.

Affected Population

HMGP funding is available, when authorized under a Presidential major disaster declaration, in the areas identified by the requesting State Governor or Chief Executive of an

eligible Tribe. The level of HMGP funding available for a given disaster is based on a percentage of the estimated total Federal assistance available under the Stafford Act, excluding administrative costs, for each Presidential major disaster declaration. This rule will extend the HMGP application deadline for States, Territories, and the District of Columbia as well as 565 Federally-recognized Tribes. HMGP applications are made by States or Tribes on behalf of subapplicants that include local government agencies and eligible private nonprofit organizations.

From 2013 to 2022, FEMA’s HMGP approved an average of 69 applications per year and approved an average of \$859,779 in Federal funding per applicant.^{33 34} Of these projects, FEMA found 43 Tribal projects, or an average

³³ FEMA adjusted approved funding amounts by the Consumer Price Index for All Urban Consumers to 2022 dollars. Available at https://data.bls.gov/timeseries/CUUR0000SA0&years_option=specific_years&from_year=2013&to_year=2022&periods_option=specific_periods&periods=M13&annual_AveragesRequested=true (Last accessed on August 1, 2024).

³⁴ Data for projects that, as of the date of this analysis, are still pending or under review where the Federal Share Obligated is not listed, as well as denied applications, were excluded from the average.

of 4 per year. However, FEMA’s database does not indicate whether these were submitted directly by an eligible Tribe, or through a State with the Tribe as a subrecipient.

Baseline

Following Office of Management and Budget (OMB) Circular A–4 guidance, FEMA assessed impacts of this rule against a no-action baseline. The no-action baseline is what the world would look like without this rule. Accordingly, measuring the rule against a no-action baseline shows the effects of the rule as compared to current FEMA practice (i.e., compared to § 206.436 and the HMA Program and Policy Guide,³⁵ which reflect FEMA’s current practice).

FEMA conducted a 10-year retrospective analysis of available HMGP data from 2013 to 2022, the most recent representative disaster period with complete data at the time of this analysis, to estimate how the rule will impact major disaster declaration costs, benefits, and transfers over a 10-year period. FEMA recognizes a future 10-

³⁵ HMAPP, Part 6.C.1., p. 131, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

year period could vary from the 2013 to 2022 period. However, this is the best estimate given the data available and the unpredictability of the number, size, and cost of future HMGP awards.

FEMA is making the following changes in this rule: (1) Extending the initial deadline for States to submit local HMGP applications and funding requests from 12 months to 15 months from the date of disaster declaration; (2) increasing application period extensions from increments of an additional 90 days to 120-day increments and increasing the total limit from 180 days to 240 days; (3) allowing FEMA to consider application period extension requests beyond 240 days for extenuating circumstances outside of the applicant’s control; (4) enabling the reopening of a closed application period if FEMA approves a recalculation of HMGP assistance funding and the applicant requests to reopen the application period within 60 days of FEMA’s recalculation approval; and (5) enabling the reopening of a closed application period if FEMA grants an appeal for an application period extension denial after an application period is closed.

For this analysis, FEMA looked at approved HMGP applications and the timelines in which they were submitted. FEMA looked at application deadlines that were extended by FEMA Regional Administrators as well as extensions approved by FEMA Headquarters. For all disasters declared between January 1, 2013, and December 31, 2022 the

average application period was 19.3 months.³⁶

Currently, the Regional Administrator can issue an extension of 6 months to each disaster’s application period. Disasters that require application submission time in excess of 18 months (12-month application period + 6-month regional extension) can be extended by FEMA Headquarters. The average Headquarters extension required is 11.6 months. FEMA found that 510 out of the 689 disasters declared in the 10-year period, or 74 percent, needed an extension from a FEMA Regional Administrator (over 12 months), and 184 out of the 510 disasters requiring an extension from FEMA, or 36 percent, also needed an extension from FEMA Headquarters (over 18 months). Changing the standard length of the application period from 12 months to 15 months and changing the Regional Administrator’s extension authority from 6 months to 8 months will allow the regions to completely handle disasters with application periods under 23 months. This represents 579 out of 689 disasters declared in the 10-year period, or 84 percent. FEMA estimates that with this rule, an average of 110 disasters per year, or 16 percent of disasters annually, will require an extension from FEMA Headquarters.

FEMA does not have historical data for reopening the application period. FEMA does not currently have the regulatory authority to reopen application periods. However, FEMA does know of two requests over the past

5 years to reopen the application period, both of which were denied.

Costs

The primary costs associated with this rule are familiarization costs for States, Territories, the District of Columbia, and Tribes after this rule is finalized. FEMA assumes that Tribal Governments will only need to understand this process when a disaster is declared in their territory, so rather than estimating familiarization costs for all 565 Tribes, FEMA assumes only 4 per year—the average number of Tribal projects per year from 2013 to 2022—will need to read and understand this rule. FEMA estimates that in the first year, 60 applicants will read this rule, followed by an average of 4 applicants in subsequent years.

Based on a benchmark reading level of 250 words per minute for most adults,³⁷ FEMA estimates that for each applicant two Emergency Management Directors per State, with a fully-loaded wage rate of \$55.78³⁸ ($\34.86×1.6)³⁹ will spend 0.7 hours (approximately 9,000 words ÷ 250 words per minute ÷ 60 minutes) to read and understand this rule. This will lead to familiarization costs of \$4,686 for the first year ($\$55.78 \text{ per hour} \times 0.7 \text{ hours} \times 120 \text{ employees}$). Subsequent years will have familiarization costs of \$312 ($\$55.78 \text{ per hour}^{40} \times 0.7 \text{ hours} \times 8 \text{ employees}$).

FEMA estimates the 10-year annualized familiarization costs for this rule to be \$810 at 7 percent and \$894 at 3 percent. See Table 1.

TABLE 1—10-YEAR FAMILIARIZATION COSTS, DISCOUNTED AND ANNUALIZED [2023]

Year	Undiscounted	3 Percent	7 Percent
1	\$4,686	\$4,550	\$4,379
2	312	294	273
3	312	286	255
4	312	277	238
5	312	269	222
6	312	261	208
7	312	254	194
8	312	246	182
9	312	239	170

³⁶Data was pulled from FEMA’s NEMIS database. Data is entered manually by FEMA employees processing these applications and is subject to data entry and incomplete or missing data fields. FEMA excluded Disaster numbers 4241, 4140, 4214, and 4163 from this average as that data is unreliable. Including these disasters will have increased the average to 19.64 months.

³⁷HealthGuidance.org, What Is the Average Reading Speed and the Best Rate of Reading? (April 22, 2024), available at <https://www.healthguidance.org/entry/13263/1/what-is-the-average-reading-speed-and-the-best-rate-of-reading.html> ExecuRead, Speed Reading Facts, <https://secure>.

execuread.com/facts/ (last accessed on August 1, 2024).

³⁸Bureau of Labor Statistics, May 2022 National Industry-Specific Occupational Employment and Wage Estimates, NAICS 999200 State Government excluding schools and hospitals, SOC 11–9161 Emergency Management Directors mean hourly wage \$34.86. Available at https://www.bls.gov/oes/2022/may/naics4_999200.htm#11-0000. (last accessed on August 1, 2024).

³⁹FEMA uses a benefits multiplier of 1.61 to calculate fully loaded wage rates. The benefits multiplier accounts for costs to the employer beyond wages, 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 2023. Available at http://www.bls.gov/news.release/archives/ecec_06162023.pdf. (last accessed on August 1, 2024). The benefits multiplier is calculated by dividing total compensation for State and local government workers of \$58.08 by Wages and salaries for State and local government workers of \$35.89 per hour yielding a benefits multiplier of approximately 1.6 ($\$58.08 \div \35.89).

⁴⁰Occupational Employment Statistics do not include Tribal Governments in their estimates, so FEMA used the wage rate for State Government employees.

TABLE 1—10-YEAR FAMILIARIZATION COSTS, DISCOUNTED AND ANNUALIZED—Continued
[\$2023]

Year	Undiscounted	3 Percent	7 Percent
10	312	232	159
Total	7,494	6,908	6,280
Annualized		810	894

FEMA cannot predict whether applicants will spend additional time on their grant applications as a result of the extension. However, FEMA expects extending the application period by 3 months for HMGP assistance will not increase costs to HMGP applicants or to FEMA. Applicants will have more knowledge about the amount of money they will have to spend at 15 months because the “lock-in” generally occurs at 12 months; the extension allows for 3 months of additional time, post-disaster, to recover and identify areas for improved resiliency in their communities. FEMA expects the additional time will help applicants ensure application information is accurate and includes necessary mitigation projects. The ability to reopen the application period is not allowed under current regulations, so this will add additional costs to FEMA and applicants. An applicant will have to dedicate time to request the reopening, and FEMA will have to

review and approve or deny the reopening based on statutory authority to do so. However, since this has not been done before, FEMA does not have historical data to estimate the time and staffing requirements to reopen an application period.

Benefits

This rule will reduce the application burden for applicants and FEMA by extending application deadlines to a more reasonable timeframe. These timeframes will allow applicants to collect information and submit the application to the FEMA Region and receive approval without the additional steps involved in requesting extensions from FEMA Regional Administrators and FEMA Headquarters. Additionally, this rule will decrease the burden on FEMA of processing application extension requests.

FEMA estimated cost savings to the Federal Government by multiplying the reduction of work hours for FEMA staff

to review and process the extension request by the hourly-loaded wage rates. HMGP regional staff estimate a time burden between 3–5 hours per extension request, which includes multiple levels of review. FEMA used an average estimate of 3.5 hours for a Regional Office review and 4 hours for a Headquarters review. FEMA used Step 5 of the General Schedule to account for the average experience level of Federal employees, and added a 23.25 percent average locality multiplier to account for average locality pay across the United States⁴¹ to the 2023 General Schedule (Base)⁴² pay, as well as a 1.45 percent benefits multiplier.⁴³ For example, a GS–12 Step 5 working in a Regional Office would have an estimated hourly compensation of \$69.00 (base wage of \$38.61 × 1.2325 average locality adjustment × 1.45 wage multiplier). Table 2 shows the breakdown of time and wages for FEMA staff to review and approve extension requests.

TABLE 2—REVIEW OF HMGP EXTENSION REQUESTS (2023\$)

Type	Grade level	Hours	Fully-loaded wage rate ⁴⁴	Total opportunity cost savings
Regional Extension *	12	2.5	\$69.00	\$172.50
	14	0.5	96.95	48.48
	15	0.25	114.05	28.51
	† SES	0.25	123.09	30.77
	Total per Request			280.26
HQ Extension ^	12	2.5	74.17	185.42
	14	0.5	104.23	52.11
	15	0.25	122.60	30.65
	13 (Legal Review)	0.5	88.20	44.10
	SES	0.25	123.09	30.77
Total per Request			343.05	

* Office of Personnel Management 2023 Pay and Leave Table (Base Schedule with 23.25% increase for average locality differential). Available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/GS_h.pdf. (Wage rates multiplied by 1.2325) (last accessed on August 1, 2024).

⁴¹ FEMA averaged the locality adjustment for all localities across the U.S. Available at <https://www.federalpay.org/gs/locality> (last accessed on August 1, 2024).
⁴² 2023 General Schedule Pay Table (Base), available at https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/pdf/GS_h.pdf. (last accessed on August 1, 2024).

⁴³ FEMA uses a benefits multiplier of 1.45 to calculate fully loaded wage rates. The benefits multiplier accounts 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 2023. Available at <http://www.bls.gov/news.release/>

[archives/ecec_06162023.pdf](https://www.federalpay.org/gs/locality) (last accessed on August 1, 2024).
The benefits multiplier is calculated by dividing total compensation for civilian workers of \$43.07 by Wages and salaries for civilian workers of \$29.70 per hour yielding a benefits multiplier of approximately 1.45 (\$43.07 ÷ \$29.70).

† Senior Executive Service January 2023 Pay and Leave. Available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/23Tables/exec/html/ES.aspx>. (last accessed on August 1, 2024). FEMA used the midpoint of the salary range (\$141,022 to \$212,100) of \$176,561 and applied a multiplier of 1.45 to obtain yearly compensation of \$256,013. Yearly salary was divided by 2,080 to estimate hourly compensation of \$123.09.

^ Office of Personnel Management 2023 Pay and Leave Tables for the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality. Available at <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2023/DCB.pdf> (last accessed on August 1, 2024).

FEMA estimates that this rule will reduce the number of extension requests by 6.9 per year for the Regional Administrators and 7.4 per year for FEMA Headquarters. This will lead to a cost reduction of \$1,934 (6.9 requests × \$280.26) per year for Regional extensions and \$2,539 (7.4 requests × \$343.05) per year for Headquarters extensions.

FEMA estimated the cost savings to applicants of this rule by multiplying the reduction of work hours for an applicant to compile information and submit the extension request by the annual number of extension requests and by the appropriate wage rate. HMGP regional staff estimate the time burden for applicants to be 3–5 hours for each extension request; FEMA used the average estimate of 4 hours. FEMA estimates the average number of extension requests to be 14.3 (6.9 Regional + 7.4 Headquarters) per year, and the fully-loaded⁴⁵ hourly wage rate for a State Government Emergency Management Director to be \$55.78.⁴⁶

⁴⁴ FEMA uses a benefits multiplier of 1.45 to calculate fully-loaded wage rates. The benefits multiplier accounts 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 2023. Available at http://www.bls.gov/news.release/archives/ecec_06162023.pdf (last accessed on August 1, 2024).

The benefits multiplier is calculated by dividing total compensation for civilian workers of \$43.07 by Wages and salaries for civilian workers of \$29.70 per hour yielding a benefits multiplier of approximately 1.45 ($\$43.07 \div \29.70).

⁴⁵ Fully-loaded wage rates include other benefits, we are using a factor of 1.61 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 2023. Retrieved from http://www.bls.gov/news.release/archives/ecec_06162023.pdf (last accessed on August 1, 2024).

The wage multiplier is calculated by dividing total compensation for State and local government workers of \$58.08 by Wages and salaries for State and local government workers of \$35.89 per hour yielding a benefits multiplier of approximately 1.61 ($\$58.08 \div \35.89).

⁴⁶ Bureau of Labor Statistics, Occupational Employment Survey May 2022, SOC 11–9161 Emergency Management Directors: State Government mean hourly wage \$34.86. Available at

FEMA estimates applicant cost savings of \$223.12 ($\55.78×4) per extension request and a total cost savings to applicants of \$3,191 ($\223.12×14.3 requests).

The total quantified cost savings from this rule are \$4,473 ($\$1,934 + 2,539$) in cost savings to FEMA and \$3,191 in cost savings to HMGP applicants totaling \$7,664 in cost savings per year. FEMA was unable to estimate the benefits from reopening the application period due to a lack of historical data. FEMA expects that additional cost savings will exist by diminishing the need to reopen the application period for numerous applications but cannot quantify those cost savings.

Transfer Payments

FEMA is not able to estimate the impacts on transfer payments of this rule. FEMA expects no changes in the number of HMGP grants approved, or the amount of funding obligated as total HMGP funding is limited by a “lock-in,” which acts as a ceiling for assistance available to a recipient, including its subrecipients. The level of HMGP assistance available for a given disaster is based on a percentage of the estimated total Federal assistance under the Stafford Act, excluding administrative costs for each major disaster declaration.⁴⁷ However, FEMA is unable to estimate if the changes will affect the amount of funding that is obligated but unused by applicants. Between 2013 and 2022 approximately 18.22 percent of HMGP funds were returned to the Disaster Relief fund due to a number of factors, including insufficient time for recipients to submit applications. This amount also includes withdrawn applications, ineligible applications, or applications found to not be cost-effective by FEMA. Because application time constraints were only one factor in the amount of HMGP funds not expended, FEMA is unable to estimate the amount of transfers that can be expected from this rule.

https://www.bls.gov/oes/2022/may/naics4_999200.htm#11-0000 (last accessed on August 1, 2024).

⁴⁷ HMAPP, Part 10.A.4.p.199, available at https://www.fema.gov/sites/default/files/documents/fema_hma-program-policy-guide_032023.pdf (last accessed on August 1, 2024).

Alternatives Considered

FEMA considered extending the application period to 18 months instead of 15 months, with no changes to the Regional Administrator’s ability to extend. While the average application period duration including extensions is approximately 19 months. Major disasters with extraordinary circumstances, which are far less common than typical disasters, raised the average significantly. FEMA chose to increase the application period to 15 months to balance the need to provide assistance quickly while ensuring appropriate oversight for more complex disasters. In addition, requesting additional time for Regional Administrators to authorize (*i.e.*, two 120-day extensions instead of two 90-day extensions) will address most outliers that need to extend beyond 15 months.

Conclusion

FEMA believes this rule is necessary due to historical timeframes for HMGP applications exceeding what is currently allowed by regulation. Under current practice, the majority of HMGP applications must be extended by FEMA regions and FEMA Headquarters. This creates an unnecessary burden to both FEMA and HMGP applicants that increases the costs of submitting these applications as well as project delays under the current process for requesting extension. The extensions provided by this rule will result in cost savings to both FEMA and HMGP applicants, as well as streamline the process for a substantial number of applicants who will no longer be required to navigate a cumbersome process of requesting extensions through the Regional Administrator and FEMA Headquarters. The cost savings associated with this final rule show why extending the HMGP application period will be beneficial. Additionally, this rule will allow FEMA more flexibility to reopen HMGP application periods when needed and to reopen application periods if an applicant successfully appeals a denial. This rule will ensure HMGP funds are more efficiently allocated.

TABLE 3—OMB CIRCULAR A-4 ACCOUNTING STATEMENT (2023\$)

Category	3 Percent discount rate	7 Percent discount rate
BENEFITS:		
Annualized Monetized	\$7,664	\$7,664
Qualitative (unquantified) benefits	<ul style="list-style-type: none"> • More likely to use available HMGP funds due to greater likelihood of grant approvals 	
COSTS:		
Annualized Monetized	\$810	\$894
Qualitative (unquantified) costs	N/A	
TRANSFERS:		
Annualized Monetized	\$0	\$0
Qualitative (unquantified) Transfers	<ul style="list-style-type: none"> • Increased number of approved HMGP grants up to the maximum available funding per declared disaster 	
From/To	FEMA to HMGP recipients and subrecipients	
Effects on State, local, and/or Tribal governments.	<ul style="list-style-type: none"> • Extends the HMGP application deadline for States, Territories, and the District of Columbia as well as 565 Federally recognized Tribes 	
Effects on small businesses	<ul style="list-style-type: none"> • Not estimated 	
Effects on wages	None	
Effects on growth	None	

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 847, 858–9 (Mar. 29, 1996) (5 U.S.C. 601 note) require that special consideration be given to the effects of regulations on small entities. The RFA applies only when an agency is “required by section 553 . . . to publish general notice of proposed rulemaking for any proposed rule.”⁴⁸ An RFA analysis is not required for this rulemaking because FEMA is not required to publish a notice of proposed rulemaking.

D. Unfunded Mandates Reform Act of 1995

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

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

FEMA has determined that this rulemaking will not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100,000,000 or more in any one year as a result of a Federal mandate, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Additionally, regulations are only reviewable under UMRA when an agency has published a notice of proposed rulemaking as defined by 5 U.S.C. 553(b). See 2 U.S.C. 658(10); 5 U.S.C. 601(2). FEMA is not required to publish a notice of proposed rulemaking; thus, this rule is exempt from UMRA’s requirements pertaining to the preparation of a written statement.

E. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 1995) (44 U.S.C. 3501 *et seq.*), FEMA may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless FEMA obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number. This rule contains collections of information that are subject to review by OMB. The information collections included in this rule are approved by OMB under control number 1660–0076 (Hazard Mitigation Grant Program Application and Reporting).

This rulemaking calls for no new collections of information under the PRA. This rule includes information currently collected by FEMA and approved in OMB information collection 1660–0076. The changes in this rulemaking do not change the forms, the substance of the forms, or the number of applicants who would submit the forms to FEMA. No additional documentation will be required as State, local and Tribal governments already submit extension requests. However, FEMA estimates additional flexibilities of this rule will result in a minor cost savings for SLTT applicants of \$3,191 (\$223.12 × 14.3 extension requests) per year.

F. Privacy Act/E-Government Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A “record” is any item, collection, or grouping of information

⁴⁸ 5 U.S.C. 603(a).

about an individual that is maintained by an agency, including, but not limited to, their education, financial transactions, medical history, and criminal or employment history and that contains their name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(4). A “system of records” is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained in a system of records except by following specific procedures.

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

A Privacy Threshold Analysis was completed August 3, 2023. FEMA’s OMB information collection 1660–0076 is a privacy-sensitive collection, requiring PIA coverage and coverage is provided under DHS/FEMA/PIA–006 National Emergency Management Information System Mitigation (MT) Electronic Grants (eGrants) System, which covers PII that may be included in grant applications made by states or local communities.⁴⁹ The rule, once enacted, will not change the forms, the substance of the forms, or the number of applicants who would submit to FEMA’s OMB information collection 1660–0076. The rule will not change the PII data elements or the amount of PII collected by FEMA. The rule will not require additional collection of information beyond what is already documented within the 1660–0076 Hazard Mitigation Grant Program Application and Reporting Collection

⁴⁹ Additional PIA coverage is provided under DHS/FEMA/PIA–031 Authentication and Provisioning Services, which covers PII that APS collects, uses, maintains, and retrieves about employees, contractors, members of the public; and Federal, State, local, and Tribal government officials; and under DHS/FEMA/PIA–026 Operational Data Store and Enterprise Data Warehouse, which covers PII related to the production of agency reports for internal use as well as for external stakeholders via those systems.

PTA. SORN coverage is provided under DHS/FEMA–009 Hazard Mitigation, which covers PII collected from individual property owners and/or occupants whose properties are identified in applications for public assistance, hazard mitigation assistance, and other disaster-related assistance or who have been identified by FEMA as candidates for such assistance.⁵⁰

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

Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” 65 FR 67249 (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal Governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal Government in complying with the regulation are provided by the Federal Government or the agency consults with Tribal officials. Nor, to the extent practicable by law, may an agency promulgate a regulation that has Tribal implications and preempts Tribal law, unless the agency consults with Tribal officials. This rule involves no policies that have Tribal implications under Executive Order 13175. Although Indian Tribal Governments are potentially eligible applicants under HMGP, FEMA has determined this rulemaking would not have substantial negative direct effects on citizens of Tribal Nations, on the relationship between the Federal Government and Indian Tribes, or the distribution of power and responsibilities between the Federal Government and Indian Tribes. There is no substantial direct compliance cost associated with this rule. The HMGP program is a voluntary program that provides funding to applicants, including Tribal governments, for eligible mitigation planning and projects that reduce disaster losses and protect life and property from future disaster damages. An Indian Tribal Government

⁵⁰ Additional SORN coverage is provided under DHS/ALL–004 GITAARS SORN, which covers user information collected to grant access to IT systems.

may participate as either an applicant/recipient or a subapplicant/subrecipient. FEMA does not expect the regulatory changes in this rule to disproportionately affect Indian Tribal Governments acting as applicants.

H. Executive Order 13132, “Federalism”

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

FEMA has determined that this rulemaking does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications as defined by the Executive Order. FEMA has determined that this rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion. This rulemaking amends regulations governing voluntary grant programs that may be used by State, local and Tribal governments to fund eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. States are not required to seek grant funding, and this rulemaking does not limit their policymaking discretion.

I. 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 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. It must also prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The purpose of this rule is to extend the HMGP application period to allow applicants additional time to submit projects to address the effects of climate change and other unmet mitigation needs in communities. In accordance with 44 CFR part 9, "Floodplain Management and Protection of Wetlands," FEMA determines that the changes in this rule do not meet the definition of an action that would require analysis under the 8-step decision-making process.

J. Executive Order 11990, "Protection of Wetlands"

Executive Order 11990, "Protection of Wetlands," 42 FR 26961 (May 24, 1977) sets forth that each agency must provide leadership and take action to minimize the destruction, loss, or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's

responsibilities. These responsibilities include (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding, the head of the agency may take into account economic, environmental and other pertinent factors.

In carrying out the activities described in Executive Order 11990, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. These include public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; sediment and erosion; maintenance of natural systems, including conservation and long-term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources. They also include other uses of wetlands in the public interest, including recreational, scientific, and cultural uses. The purpose of this rule is to extend the HMGP application period to allow applicants additional time to submit projects to address the effects of climate change and other unmet mitigation needs in communities. In accordance with 44 CFR part 9, "Floodplain Management and Protection of Wetlands," FEMA determines that the changes in this rule do not meet the definition of an action that would require analysis under the 8-step decision-making process.

K. National Environmental Policy Act of 1969 (NEPA)

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*), as amended, requires Federal agencies to evaluate the impacts of a proposed major Federal action that may significantly affect the quality of the human environment, consider alternatives to the proposed action, provide public notice and opportunity

to comment, and properly document its analysis. DHS and its component agencies analyze proposed actions to determine whether NEPA applies to them and, if so, what level of documentation and analysis is required. 40 CFR 1501.3.

DHS Directive 023-01, Rev. 01 and DHS Instruction Manual 023-01-001-01, Rev. 01 (Instruction Manual) establish the policies and procedures DHS and its component agencies use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing the procedural requirements of NEPA codified at 40 CFR parts 1500 through 1508. The CEQ regulations allow Federal agencies to establish, in their NEPA implementing procedures, with CEQ review and concurrence, categories of actions ("categorical exclusions") that experience has shown normally do not, individually or in the aggregate, have a significant effect on the human environment and, therefore, do not require preparation of an environmental assessment or environmental impact statement. 40 CFR 1501.4, 1507.3(c)(8), 1508.1(e). The Instruction Manual, Appendix A, lists the DHS categorical exclusions. Under DHS NEPA implementing procedures, for an action to be categorically excluded it must satisfy each of the following conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual, section V.B.(2)(a-c).

This rule revises regulations at 44 CFR 206.436 to allow FEMA to extend the Hazard Mitigation Grant Program's application time period and reopen it in limited circumstances. The revised regulations will remove barriers to allow additional applications by State, local, Tribal and territorial governments to be considered. These changes are strictly administrative and will not result in any change in environmental effect in the current regulations. Therefore, it clearly fits within categorical exclusion A3 in Appendix A of the Instruction Manual.

The rule meets the second condition that it is not a piece of a larger action. The regulatory application period that is being altered in this rulemaking only applies to HMGP and will not affect any other FEMA programs. The rule also meets the third condition because no extraordinary circumstances exist. Accordingly, this rule is categorically excluded and no further NEPA analysis or documentation is required.

L. Endangered Species Act

Section (7)(a)(2) of the Endangered Species Act mandates that each Federal agency shall, in consultation with and with the assistance of the National Marine Fisheries (NMFS) or United States Fish and Wildlife (USFWS), collectively known as the “Services,” insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Services after consultation to be critical.

To comply with Section 7(a)(2) of the ESA, for any action that FEMA proposes to carry out, fund, or authorize, FEMA must determine if its action may affect a listed species or its critical habitat. If the action may affect species or its critical habitat, 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).

This rule has been evaluated by FEMA and due to the administrative nature, FEMA has determined the rule does not have the potential to affect federally-listed species or designated critical habitat. As such, a “No Effect” determination has been made for these activities. Per the ESA regulations, notification to, and consultation with, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service are not required for activities with a “No Effect” determination. 50 CFR 402.

M. 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 take into account the effect of their undertakings on any historic property. It mandates a consultation process in the early stages of project planning and must be completed prior to the approval of expenditure of any Federal funds for the undertaking. Subpart B of 36 CFR part 800 lays out a four-step Section 106 process to fulfill this obligation: (1) initiate the process (800.3); (2) identify historic properties (800.4); (3) assess adverse effects (800.5); and (4) resolve adverse effects (800.6).

Pursuant to section 106 of the NHPA and its implementing regulations at 36 CFR part 800, FEMA has determined that this rule does not have the potential to cause effects to historic properties and in accordance with 36 CFR 800.3(a)(1), and FEMA has no further obligations under section 106.

N. Congressional Review of Agency Rulemaking

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

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

List of Subjects in 44 CFR Part 206

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

For the reasons set forth in the preamble, the Federal Emergency Management Agency amends part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE

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

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

■ 2. Amend § 206.436 by:

- a. In paragraph (d), removing the number “12” and adding in its place the number “15”;
- b. Revising paragraph (e);
- c. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h);
- d. Adding new paragraph (f); and
- e. Revising newly redesignated paragraph (g).

The revisions and addition read as follows:

§ 206.436 Application procedures.

* * * * *

(e) *Extensions.* Upon written request from the applicant, FEMA may extend the application submission timeline as follows:

(1) The State may request the Regional Administrator to extend the application time limit by 30 to 120 day increments, not to exceed a total of 240 days. The applicant must include a justification in its request.

(2) FEMA will only consider requests for extensions beyond 240 days for extenuating circumstances outside of the applicant’s control. Such requests must be submitted to the Regional Administrator and must include justification. The Regional Administrator, in coordination with FEMA’s Assistant Administrator for the Mitigation Directorate, may extend the application time limit for a reasonable amount of time based upon the extenuating circumstances.

(f) *Reopening of application period.* FEMA’s Assistant Administrator for the Mitigation Directorate may reopen a closed application period for up to 180 days in the following circumstances:

(1) *Recalculation of assistance.* If FEMA approves a recalculation of assistance under § 206.432 and an applicant requests to reopen the application period within 60 days of FEMA’s recalculation approval.

(2) *Appeal.* If FEMA grants an appeal under § 206.440 for an application extension denial after an application period is closed.

(g) *FEMA approval.* The applicant must submit its application and supplement(s) to the FEMA Regional Administrator for approval. FEMA has

final approval authority for funding of all projects.

* * * * *

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2024–17909 Filed 8–14–24; 8:45 am]

BILLING CODE 9111–BW–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WC Docket Nos. 19–195, 11–10; FCC 24–72; FR ID 233875]

Establishing the Digital Opportunity Data Collection; Modernizing the FCC Form 477 Data Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) codifies the Broadband Data Collection (BDC) challenge process deadline as required by the bipartisan Infrastructure Investment and Jobs Act, delegates authority to the offices and bureaus to conduct BDC audits, and clarifies that providers must submit detailed data to seek restoration for those locations or areas on the National Broadband Map (NBM).

DATES: Effective September 16, 2024.

FOR FURTHER INFORMATION CONTACT: For further information, please contact, Will Holloway, Broadband Data Task Force, at William.Holloway@fcc.gov or (202) 418–2334.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Fourth Report and Order in WC Docket Nos. 19–195 and 11–10, released on July 12, 2024. The full text of this document is available at the following internet address: <https://www.fcc.gov/document/fcc-takes-steps-update-broadband-data-collection-processes> or by using the Commission’s EDOCS web page at www.fcc.gov/edocs.

Paperwork Reduction Act. The Fourth Report and Order rulemaking required under the Broadband DATA Act is exempt from review by Office of Management and Budget (OMB) and from the requirements of the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. As a result, the Fourth Report and Order will not be submitted to OMB for review under section 3507(d) of the PRA.

Congressional Review Act. The Commission has determined, and the

Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of the Fourth Report and Order and Declaratory Ruling to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A). The Commission will submit the draft Fourth Report and Order and Declaratory Ruling to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for concurrence as to whether this rule is “major” or “non-major” under the Congressional Review Act, 5 U.S.C. 804(2).

Synopsis

A. Codifying the Adjudication Deadlines for Availability Challenges

1. In the Infrastructure Investment and Jobs Act of 2021 (IIJA), Congress amended the Broadband DATA Act to require the Commission to resolve any challenges received as part of the BDC “not later than 90 days after the date on which a final response by a provider to a challenge to the accuracy of a map . . . is complete.” Since the inception of the availability challenge processes, the Commission has followed this deadline. However, in the Fourth Report and Order we take steps to codify this deadline and memorialize the Commission’s challenge processes in the BDC rules.

2. The following paragraphs describe how the Commission has implemented this 90-day deadline for processing fixed and mobile service challenges, and how we will amend our rules to reflect these existing practices and the minor modifications to those practices. For each type of challenge, we indicate the date on which we deem a provider’s response to the challenge to be “final” and “complete” for purposes of triggering the 90-day deadline required by the IIJA. As set forth in the proposed rule published elsewhere in this issue of the **Federal Register**, we tentatively conclude and seek comment on whether this deadline should apply to fixed and mobile availability challenges only, and not to challenges to data in the Fabric.

3. Fixed Service Challenges. For challenges to the accuracy of fixed broadband availability data and coverage maps, the Commission’s rules currently provide that “within 60 days of receiving an alert” to a challenge, “a provider shall reply in the portal by: (i) [a]ccepting the allegation(s) raised by the challenger . . . or (ii) [d]enying the

allegation(s) raised by the challenger, in which case the provider shall provide evidence . . . that the provider serves (or could and is willing to serve) the challenged location.” If the provider accepts the allegations raised by the challenger, the provider must “submit a correction for the challenged location in the online portal within 30 days of its portal reply.” The rules state that a provider’s failure to respond to the challenge within the applicable timeframe “shall result in a finding against the provider.” “If the provider denies the allegation(s) raised by the challenger,” the rules state that “the provider and the challenger shall have 60 days after the provider submits its reply to attempt to resolve the challenge.” The rules further provide that if the parties are unable to reach consensus within 60 days after submission of the provider’s reply in the portal, then the affected provider shall report the status of efforts to resolve the challenge in the online portal, after which the Commission will review the evidence and make a determination, either: (i) in favor of the challenger, in which case the provider shall update its BDC information within 30 days of the decision; or (ii) in favor of the provider, in which case the location will no longer be subject to the “in dispute/pending resolution” designation on the coverage maps.

4. To codify the requirements of the IIJA, we amend our rules to state that in cases where a fixed broadband provider disputes the allegations raised by the challenger, the response from the provider will be final and complete when the provider reports on the status of its efforts to resolve the challenge, at which time, the 90-day deadline for adjudication of the challenge will begin to run. For example, if a consumer submits a challenge to a fixed provider’s availability data on February 28 and, after initial review, Commission staff accepts the challenge and alerts the provider (via the BDC system) of the challenge on March 1, the service provider would have until April 30 to either concede or dispute the challenge allegations (by submitting an “initial response” to the challenge in the BDC system). If the provider disputes the challenge allegation on April 30, then the parties would have until June 29 to attempt to resolve the challenge and for the service provider to report on the outcome of those discussions by submitting a “final response” to the challenge in the BDC system. This status report is the “final response by [the] provider.” Accordingly, if the provider continues to dispute the challenge in its