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DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 201

[Docket ID: FEMA-2012-0001]

RIN 1660-AA77

Change in Submission Requirements for State Mitigation Plans

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of proposed rulemaking.

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

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

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

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

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

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

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

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SUPPLEMENTARY INFORMATION:

Table of Abbreviations

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

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I. Public Participation

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

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

A. Privacy Act

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

B. Submission of Sensitive Information

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

C. Public Meeting

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

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

D. Public Input

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

II. Background

Hazard mitigation is any sustained action taken to reduce or eliminate long-term risk to people and property from natural hazards and their effects. The purpose of hazard mitigation planning is to identify policies and actions that can be implemented over the long-term to reduce risk and future losses. Mitigation plans form the foundation for a community's long-term strategy to reduce disaster losses and break the cycle of disaster damage, reconstruction, and repeated damage. The planning process is as important as the plan itself. It creates a framework for risk-based decision making to reduce damage to lives, property, and the economy from future disasters. State, Tribal, and local governments benefit from mitigation planning by identifying publicly-accepted cost-effective actions for risk reduction, focusing resources on the greatest risks and vulnerabilities, and building partnerships by involving people, organizations, and businesses. The planning process, and mitigation plans, foster education and awareness

of hazards and risk, communicate priorities to state and Federal officials, and align risk reduction with other community objectives, such as community development. State, Tribal, and local governments are required to develop a hazard mitigation plan as a condition for receiving certain types of Federal non-emergency disaster assistance.

A. Disaster Mitigation Act of 2000

The Disaster Mitigation Act of 2000 (DMA 2000), Public Law 106-390, 114 Stat. 1552, amended the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) and provided an opportunity for States, Tribes, and local governments to take a new and revitalized approach to mitigation planning. Section 104 of DMA 2000 continued the requirement for a State mitigation plan as a condition of non-emergency disaster assistance, and created incentives for increased coordination and integration of mitigation activities at the State level. DMA 2000 repealed Section 409 of the Stafford Act, which required mitigation plans and the use of minimum standards, and replaced it with two separate sections of the law: mitigation planning in section 322 (codified at 42 U.S.C. 5165), and minimum codes and standards in section 323 (codified at 42 U.S.C. 5165a). FEMA previously implemented section 409 through 44 CFR Part 206, Subpart M. The DMA 2000 planning requirements were placed in 44 CFR Part 201 to reflect the broader relevance of planning to all FEMA mitigation programs, while the minimum standards remained in 44 CFR Part 206, Subpart M.

Section 104 of DMA 2000 and FEMA's implementing regulations emphasize the need for State, Tribal, and local entities to closely coordinate mitigation planning and implementation efforts. The planning process provides a link between State, Tribal and local mitigation programs. Both State level and local plans should incorporate mitigation

implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference hazardous materials and other non-natural hazard plans.

Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as expedite implementation of measures and activities to reduce those risks, both pre- and post-disaster.

DMA 2000 included a provision for increased Federal funding for hazard mitigation measures for States with approved mitigation plans. 42 U.S.C. 5165(e). FEMA implemented this provision through development of a new two-tiered State mitigation plan process: Standard State Mitigation Plans, which allow a State to receive Hazard Mitigation Grant Program (HMGP) funding ranging from 7.5 to 15 percent of disaster grants awarded by FEMA, depending on the total estimated eligible Stafford Act disaster assistance, and Enhanced State Mitigation Plans, which allow a State to receive HMGP funds based on 20 percent of the total estimated eligible Stafford Act disaster assistance. 44 CFR 201.5. Enhanced State Mitigation Plans must meet the requirements for Standard State Mitigation Plans at 44 CFR 201.4 and must also demonstrate that the State has developed a comprehensive mitigation program, that it effectively uses available mitigation funding, and that it is capable of managing the increased funding.

B. Hazard Mitigation Assistance

FEMA's Hazard Mitigation Assistance (HMA) grant programs provide funding for eligible mitigation activities that reduce disaster losses and protect life and property from future disaster damages. Currently, FEMA administers the following HMA grant programs:

- Hazard Mitigation Grant Program (HMGP) assists in implementing long-term hazard mitigation measures following Presidential disaster declarations. Funding is available to implement projects in accordance with State, Tribal, and local priorities. HMGP grants may fund the updating of mitigation plans.
- Pre-Disaster Mitigation (PDM) provides funds on an annual basis for hazard mitigation planning and the implementation of mitigation projects prior to a disaster. The goal of the PDM program is to reduce overall risk to the population and structures, while at the same time reducing reliance on Federal funding from actual disaster declarations. PDM grants may fund the updating of mitigation plans.
- Flood Mitigation Assistance (FMA) provides funds on an annual basis so that measures can be taken to reduce or eliminate risk of flood damage to buildings insured under the National Flood Insurance Program (NFIP). FMA grants may fund the updating of mitigation plans.
- Repetitive Flood Claims (RFC) provides funds on an annual basis to reduce the risk of flood damage to individual properties insured under the NFIP that have had one or more claim payments for flood damages.
- Severe Repetitive Loss (SRL) provides funds on an annual basis to reduce the risk of flood damage to residential structures insured under the NFIP that are qualified as SRL structures.

FEMA's HMA grants are provided to eligible applicants (States/Tribes/Territories) that, in turn, provide subgrants to local governments and other eligible entities. Subgrantees may be a State agency, local government, private nonprofit organization (for HMGP

only), or Indian Tribal government. Indian Tribal governments acting as a subgrantee are accountable to the State grantee. The applicant selects and prioritizes subapplications developed and submitted to them by subapplicants. These subapplications are submitted to FEMA for consideration of funding.

Under FEMA's mitigation grant programs there is a standard cost share formula in which the Federal government provides 75 percent of the project cost and the State or subgrantee provides 25 percent. In general, hazard mitigation assistance is restricted to a percentage of total Federal contributions for a major disaster, which currently ranges from 7.5 to 15 percent depending on the estimated aggregate amount of Federal grants for that disaster. 42 U.S.C. 5170c(a). Indian Tribal governments that meet the requirements for Enhanced State Mitigation Plans may also be considered for increased HMGP funding. 44 CFR 201.3(e)(3).

C. Regulatory History

FEMA's February 26, 2002 Interim Final Rule (IFR), entitled "Hazard Mitigation Planning and Hazard Mitigation Grant Program," 67 FR 8844, implemented section 322 of the Stafford Act by adding a new part 201 to 44 CFR. The IFR discontinued the requirement under former section 409 of the Stafford Act that States revise their mitigation plan after every disaster declaration, but included the requirement that Standard State Mitigation Plans had to be updated by November 1, 2003¹ and resubmitted to the appropriate Regional Director for approval every 3 years from the date of the approval of the previous plan in order to continue program eligibility. Additionally, the

¹ An October 1, 2002 revision changed the date by which the Standard State Mitigation Plans had to be updated from November 1, 2003 to November 1, 2004. 67 FR 61512. A subsequent revision on September 13, 2004 provided for a 6 month extension, up to May 1, 2005, at the request of the Governor or Indian Tribal leader. 69 FR 55094.

IFR provided criteria for Enhanced State Mitigation Plans and required that for States to be eligible for the 20 percent HMGP funding, the Enhanced State Mitigation Plan must be approved by FEMA within the 3 years prior to the current major disaster declaration, and resubmitted for approval every three years. On October 31, 2007, FEMA published a Final Rule adopting, without substantive changes, the requirements for hazard mitigation planning pursuant to section 322 of the Stafford Act.

Table 1 displays the regulatory history for the mitigation planning requirements listed in §§ 201.3-201.5 for the Standard and Enhanced State Mitigation Plan reporting requirements. Currently, these Plans have to be updated every 3 years.

Table 1

RIN	Action	Date	Federal Register Citation	Effect on §§ 201.3, 201.4, & 201.5	Changes to State Mitigation Plan Requirements
3067-AD22	IFR	2/26/02	67 FR 8844	Added §§ 201.3, 201.4, & 201.5	States must have approved Standard State Mitigation Plan by November 1, 2003 and every 3 years from the date of the approval of the previous plan. Enhanced State Mitigation Plans resubmitted to the appropriate Regional Director every 3 years. For State to be eligible for 20 percent HMGP funding, the Enhanced State Mitigation plan must be approved by FEMA within the 3 years prior to current major disaster declaration.
3067-AD22	IFR	10/1/02	67 FR 61512	Revised §§ 201.3 and 201.4	Changed the requirement to update the Standard State Mitigation Plan to November 1, 2004.
1660-AA17 ²	IFR	9/13/04	69 FR 55094	Added § 201.3(c)(7) & Revised § 201.4	Allowed a 6 month extension to the deadline for the Standard State Mitigation Plan, up to May 1, 2005.
1660-AA17	Final Rule	10/31/07	72 FR 61552	Finalized Part 201	Corrected a typographical error in § 201.4(c)(2)(ii).
1660-AA36	IFR	10/31/07	72 FR 61720	Revised § 201.3	Removed references to November 1, 2004 deadline and made technical corrections.
1660-AA36	Final Rule	9/16/09	74 FR 47471	Finalized § 201.3	No changes.

² The RIN changed from 3067-AD22 to 1660-AA17 as a result of FEMA becoming a component of the Department of Homeland Security.

D. Discussion of the NPRM

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

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

Mitigation planning is a continuous process of engaging stakeholders, identifying hazards as conditions may change, assessing risk and vulnerabilities as development patterns may change, and developing a strategy that can be implemented using available resources, programs, and initiatives based on current priorities. The outcome of the mitigation planning process is implementation of mitigation actions that reduce vulnerabilities identified in the risk assessment.

As stated in the planning regulations at § 201.4(a), the mitigation plan is the demonstration of the State's commitment to reduce risks from natural hazards and serves

as a guide for State decision makers as they commit resources to reducing the effects of natural hazards. In addition, per § 201.4(c)(4)(i), States have the responsibility to support, through funding and technical assistance, the development of Local Mitigation Plans. Through mitigation planning, States build partnerships as well as capacity to increase resilience and reduce the Nation's risk to natural hazards.

As mitigation planning is a performance-based approach rather than prescriptive, there is a wide range in the level of effort invested to meet the minimum requirements for FEMA approval. This performance-based approach allows State, local, and Tribal governments the ability to tailor mitigation strategies and actions to meet specific risks and vulnerabilities identified through risk assessments. In many instances, mitigation plan updates provide opportunities for State, local, and Tribal governments not only to verify that the plans are still relevant, but also to strengthen and improve mitigation strategies and specific actions to reduce risk and improve resilience.

FEMA proposes the change in the frequency of the update requirement for several reasons. First, the proposed reduction in update frequency will reduce the regulatory burden on States and those Indian Tribal governments that may choose to develop Enhanced Plans, as well as on FEMA. Second, aligning the update frequency with local and Tribal update requirements may foster closer coordination of mitigation planning and implementation efforts. Third, by relieving the regulatory burden imposed from the frequency of State plan updates, States and FEMA may be able to shift resources from the update and review cycle to other mitigation planning activities, such as increased delivery of training and technical assistance to support Local and Tribal Mitigation

Planning, and to implementing additional mitigation actions identified through the planning process.

E. Stakeholder Involvement

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

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

This position paper included a recommendation to support

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

In 2011, DHS received public comments on the mitigation planning regulations in response to a Federal Register notice published as part of a retrospective review of its regulations. According to the final report titled “Final Plan for the Retrospective Review of Existing Regulations” dated August 22, 2011 (See page 16),

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

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

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

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

The letter further stated that

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

Finally, the letter closed by stating

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

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

F. Proposed Revisions

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

G. Implementation

If the proposed revisions are adopted, the Standard State Mitigation Plan and the Enhanced State Mitigation Plan updates would be due 5 years from the date of the approval of the previous plan.

III. Regulatory Analyses

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

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

This portion of the preamble summarizes FEMA’s analysis of the economic impacts of this proposed rule. However, readers seeking greater detail are encouraged to

read the full regulatory evaluation, a copy of which FEMA has placed in the docket for this rulemaking.

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

Who is Potentially Affected by this Rule

The proposed rule would affect States³ that choose to submit updated Standard State Mitigation Plans or Enhanced State Mitigation Plans to FEMA for approval, and Indian Tribal governments that choose to meet the requirements for Enhanced State Mitigation Plans in order to qualify for increased HMGP funding.

Savings to Society of this Rule

The cost to update a State’s Mitigation Plan is unique to that respective State. However, for the purposes of this analysis, FEMA estimates an average Standard State Mitigation Plan update unit cost of \$205,000 and an Enhanced State Mitigation Plan update unit cost of \$524,000. FEMA also assumes that 46 States would submit Standard State Mitigation Plans and 10 States would submit Enhanced State Mitigation Plans.

³ As defined by section 102 of the Stafford Act, “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 (2011).

FEMA would also incur costs to review State Mitigation Plans. FEMA estimates that a General Schedule 13, Step 1, Federal employee, at a fully loaded wage of \$48.08 ($\$34.34 \times 1.4 = \48.076) would spend 120 hours reviewing a Standard or Enhanced State Mitigation Plan. The resulting FEMA review cost per plan is \$5,770 (120 hours * \$48.08 per hour = \$5,769.60).

Therefore, the cost of State Mitigation Plan updates in a given year, where all updates are submitted, is approximately \$15 million ($(\$205,000 + \$5,770) \times 46 + (\$524,000 + \$5,770) \times 10 = \$14,993,120$). The extension of the State Mitigation Plan update frequency from 3 to 5 years would reduce the number of State Mitigation Plan updates submitted by 2 over 15 years. The resulting undiscounted total cost savings is approximately \$30 million over 15 years ($\$14,993,120 \times 2 = \$29,986,240$); or, \$18.8 million total cost savings over 15 years if discounted at 7 percent. The annual impact of this proposed rule is approximately \$2 million undiscounted ($\$29,986,240 \div 15 = \$1,999,083$).

Benefits of this Rule

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

Significance Determination

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

- 1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- 2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- 3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- 4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

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

Retrospective Review

To facilitate the periodic review of existing significant regulations, Executive Order 13563 requires agencies to consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to

modify, streamline, expand, or repeal them in accordance with what has been learned. The Executive Order requires agencies to issue a retrospective review plan, consistent with law and the agency's resources and regulatory priorities, under which the agency will periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives.

The Department of Homeland Security issued its "Final Plan for the Retrospective Review of Existing Regulations" (Plan) on August 22, 2011. The Plan can be viewed at <http://www.dhs.gov/xlibrary/assets/dhs-ogc-final-retrospective-review-plan-8-22-11-final.pdf>. This rule was included in the Plan as a long-term retrospective review candidate, meaning the agency would undertake retrospective review of the regulation within 3 years of the date of the Plan. The Plan stated that FEMA would consider whether it would be more efficient to extend the review period to 5 years for each of the plans as requested by public commenters. Review of FEMA's existing Mitigation Plan regulations revealed the potential for State cost savings, approximately \$30 million over 15 years, as well as other benefits. Therefore, FEMA is proposing to extend the State Mitigation Plan minimum update frequency from 3 to 5 years.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), FEMA evaluated and considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-

profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

As the proposed rule would not result in additional costs, FEMA does not anticipate that the rule would have a significant economic impact on a substantial number of small entities. However, FEMA invites comments on this initial determination.

C. Unfunded Mandates Reform Act

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

D. Paperwork Reduction Act (PRA) of 1995

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

In this NPRM, FEMA is seeking a revision to the already existing collection of information identified as OMB Control Number 1660-0062, and withdraws the previous Federal Register notice regarding this information collection which published on February 24, 2012 (77 FR 11142). This revision reflects the reduction in the annual cost burden to respondents or recordkeepers resulting from the proposed rule, as well as refinements to current estimates in 1660-0062 based on changes to the way cost burden is

reported under the PRA. Annual cost burden was previously derived from multiplying total annual burden hours, based on subject matter expert average hour estimates per mitigation plan, by the associated wage rates. However, FEMA has refined how it calculates annual costs and now uses cost estimates based on historical mitigation plan grant data, which includes contract support and other associated costs. This NPRM serves as the 60-day comment period for this proposed change pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

Collection of Information

Title: State/Local/Tribal Hazard Mitigation Plans.

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

OMB Number: 1660-0062.

Form Titles and Numbers: None.

Abstract: The purpose of State, Local, and Tribal Hazard Mitigation Plan requirements is to support the administration of FEMA Mitigation grant programs, and a significant State, local, and Tribal commitment to mitigation activities, comprehensive mitigation planning, and strong program management. Implementation of planned, pre-identified cost-effective mitigation measures will streamline the disaster recovery process. Mitigation plans are the demonstration of the goals and prioritization to reduce risks from natural hazards. This proposed rule revises FEMA Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates by extending the update requirement from 3 to 5 years. This reduction in frequency will result in a reduction of 8,899 hours in the burden hours on the

public and a \$1,350,580 reduction in the annual cost burden to respondents or recordkeepers resulting from the collection of information. Due to the change in reporting methods described above, the base line numbers have changed, resulting in an overall increase in the estimated total annual cost. This impact is separate from the effect of the proposed rule.

Affected Public: State, local, or Tribal Government.

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

Estimated Total Annual Burden Hours: 227,366 hours.

The previously approved Total Annual Burden Hours was 768,320 hours. Based on adjustments to how this burden was estimated (see Information Collection Request for details) and the proposed rule's reduction in burden, the new estimated Total Annual Burden Hours is 227,366 hours. This is a decrease of 540,954 hours, of which approximately 8,899 hours are attributed to the change in State Mitigation Plan update frequency. However, some of the burden hours previously accounted for likely reflected some of the costs, including contract support, now included in the separately-reported categories under total annual cost burden..

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

Table 3

Type of Respondent	Form Name/ Form Number	No. of Respondents	No. of Responses per Respondent¹	Total No. of Responses²	Avg Burden per Response (hours)	Total Annual Burden (hours)	Avg Hourly Wage Rate³	Total Annual Respondent Cost⁴
Local or Tribal Government	New Local and Tribal Plans	56	5	280	289	80,920	\$45.33	\$3,668,104
Local or Tribal Government	Local and Tribal Plan Updates	56	9	504	249	125,496	\$45.33	\$5,688,734
State Government	State Review of Local and Tribal Plans	56	14	784	8	6,272	\$45.33	\$284,310
State Government	Standard State Plan Updates	46	0.2	9	1,040	9,360	\$45.33	\$424,289
State Government	Enhanced State Plan Updates	10	0.2	2	2,659	5,318	\$45.33	\$241,065
Total		56		1,579		227,366		\$10,306,502

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

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

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

4- Rounded to the nearest dollar.

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

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

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

Table 4

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

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

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

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

Comments

Comments may be submitted as indicated in the ADDRESSES caption above.

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

E. National Environmental Policy Act (NEPA) of 1969

Section 102 of the National Environmental Policy Act of 1969 (NEPA), Public Law 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.) requires agencies to consider the impacts in their decision-making on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EIS) for major federal actions significantly affecting the quality of the human environment. Each agency can develop categorical exclusions to cover actions that

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

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

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

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249, November 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency shall promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required

by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

This proposed rule would revise FEMA's Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates from 3 to 5 years. Tribal Mitigation Plan updates are already required every 5 years; however, in accordance with 44 CFR 201.3(e)(3), Indian Tribal governments are potentially eligible to act as grantee and qualify for increased HMGP funding by submitting an Enhanced Mitigation Plan. Under the current regulations, Indian Tribal governments that wish to submit an Enhanced Mitigation plan are required to update that plan every 3 years; the proposed rule would reduce that frequency to every 5 years. For these reasons, this rule may have "tribal implications" as defined in the Executive Order. Submission of the plan, however, is voluntary, and changing the frequency of the plan from 3 to 5 years will not impose direct compliance costs on Indian tribal governments. Therefore, FEMA finds that this proposed rule complies with Executive Order 13175.

G. Executive Order 13132, Federalism

A rule has implications for federalism under Executive Order 13132, "Federalism" (64 FR 43255, Aug. 10, 1999), if it has a substantial direct effect on 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. FEMA has analyzed this NPRM under the Executive Order and determined that it does not have implications for federalism.

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

The Standard State and Enhanced State Mitigation Plan updates are voluntarily submitted by States. Per DMA 2000, Mitigation Plans are a condition of receipt of increased Federal funding for hazard mitigation measures. If a State chooses not to comply with the regulations in 44 CFR Part 201, it still would be eligible for limited emergency assistance under the Stafford Act. (See 42 U.S.C. 5170a, 5170b, 5173, 5174, 5177, 5179, 5180, 5182, 5183, 5184, and 5192).

H. Executive Order 12630, Taking of Private Property

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

I. Executive Order 12898, Environmental Justice

Under Executive Order 12898, as amended, “Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, Feb. 16, 1994), FEMA incorporates environmental justice into its policies and programs. Executive Order 12898 requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment, in a

manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level.

This rule relates to the implementation of section 322 of the Stafford Act (42 U.S.C. 5165). Section 322 focuses specifically on mitigation planning to identify the natural hazards, risks, and vulnerabilities of areas in States, localities, and Tribal areas; development of Local Mitigation Plans; technical assistance to local and Tribal governments for mitigation planning; and identifying and prioritizing mitigation actions that the State will support as resources become available. The proposed reduction in burden from the update frequency may allow States to focus on implementing additional mitigation actions identified through the planning process as a means to increase resilience and reduce the Nation's risk to natural hazards; thereby also protecting human lives and the environment. No action that FEMA can anticipate under this rule will have a disproportionately high and adverse human health or environmental effect on any segment of the population.

J. Executive Order 12988, Civil Justice Reform

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

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

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

L. Executive Order 11988, Floodplain Management

FEMA has prepared and reviewed this rule under the provisions of Executive Order 11988, as amended, “Floodplain Management” (42 FR 26951, May 25, 1977). The regulations at 44 CFR Part 9 set forth FEMA’s policy, procedures, and responsibilities in implementing this Executive Order. In summary, these are, to the greatest possible degree: to avoid long and short term adverse impacts associated with the occupancy and modification of floodplains; avoid direct and indirect support of floodplain development whenever there is a practical alternative; reduce the risk of flood loss; promote the use of nonstructural flood protection methods to reduce the risk of flood loss; minimize the impacts of floods on human health, safety and welfare; restore and preserve the natural and beneficial values served by floodplains; and adhere to the objectives of the Unified National Program for Floodplain Management.

As stated in the preamble, the planning process provides a link between State, Tribal and and local mitigation programs. Both State level and local plans should address strategies for incorporating post-disaster early mitigation implementation strategies and sustainable recovery actions. FEMA also recognizes that governments are involved in a range of planning activities and that mitigation plans may be linked to or reference comprehensive plans, land use plans, master plans, and other non-natural hazard plans. Improved mitigation planning will result in a better understanding of risks and vulnerabilities, as well as expediting implementation of measures and activities to reduce

those risks, both pre- and post-disaster. This proposed rule revises FEMA’s Mitigation Planning regulations in order to reduce the frequency of Standard State and Enhanced State Mitigation Plan updates, extending the update requirement from 3 to 5 years. The proposed change aligns the State update requirements with Local and Tribal Mitigation Plan update requirements, which does not conflict with the intent of the Executive Order.

List of Subjects in 44 CFR Part 201

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

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

PART 201—MITIGATION PLANNING

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

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

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

§ 201.3 Responsibilities.

* * * * *

(b) * * *

(5) Conduct reviews, at least once every 5 years, of State mitigation activities, plans, and programs to ensure that mitigation commitments are fulfilled, and when

necessary, take action, including recovery of funds or denial of future funds, if mitigation commitments are not fulfilled.

(c) * * *

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

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

* * * * *

(e) * * *

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

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

§ 201.4 Standard State Mitigation Plans.

* * * * *

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

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

§ 201.5 Enhanced State Mitigation Plans.

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

* * * * *

(c) * * *

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

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

Dated: February 22, 2013

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

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