

Plan,” OMB approval number 1660–0075.

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

FEMA has reviewed this rule under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, published November 9, 2000). In reviewing the portion of the rule which streamlines the mitigation planning requirements affecting Indian tribal governments, FEMA finds that, while it does have “tribal implications” as defined in Executive Order 13175, it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

*J. Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights*

FEMA has reviewed this rule under Executive Order 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights” (53 FR 8859, published March 18, 1988) as supplemented by Executive Order 13406, “Protecting the Property Rights of the American People” (71 FR 36973, published June 28, 2006). This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

*K. Executive Order 12988, Civil Justice Reform*

FEMA has reviewed this rule under Executive Order 12988, “Civil Justice Reform” (61 FR 4729, published February 7, 1996). This rule meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden.

**List of Subjects in 44 CFR Part 78**

Flood insurance, Grant programs.

■ Accordingly, for the reasons stated in the preamble, the interim rule amending 44 CFR part 78 which was published at 62 FR 13346 on March 20, 1997, is adopted as final, with the following changes:

**PART 78—FLOOD MITIGATION ASSISTANCE**

■ 1. The authority citation for part 78 is revised to read as follows:

**Authority:** 6 U.S.C. 101; 42 U.S.C. 4001 *et seq.*; 42 U.S.C. 4104c, 4104d; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978

Comp., p. 329; 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.

**§ 78.1 [Amended]**

■ 2. In § 78.1, paragraph (b), remove the word “insurable” and add, in its place, the word “insured”.

Dated: October 24, 2007.

**Harvey E. Johnson, Jr.,**

*Deputy Administrator/Chief Operating Officer, Federal Emergency Management Agency.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Parts 201, 204, and 206**

[Docket ID FEMA–2007–0004]

RIN 1660–AA17

**Hazard Mitigation Planning and Hazard Mitigation Grant Program**

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) is adopting as final, without substantive changes, interim rules that establish requirements for hazard mitigation planning and the Hazard Mitigation Grant Program (HMGP) pursuant to sections 322 and 323 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

**DATES:** This final rule is effective November 30, 2007.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

**I. Background**

This rulemaking finalizes, without substantive changes, interim rules implementing sections 322 and 323 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5165), enacted by section 104 of the Disaster Mitigation Act of 2000 (DMA 2000), (42 U.S.C. 5121 note). Section 322 requires, as a

condition of receipt of federal hazard mitigation grant assistance, hazard mitigation planning and is implemented in the Emergency Management and Assistance regulations at 44 CFR part 201 (Mitigation Planning). Section 323 requires, as a condition of receipt of disaster loans or grants distributed under the Hazard Mitigation Grant Program (HMGP) that minimum repair and construction codes, specifications, and standards are followed. Section 323 is implemented at 44 CFR part 206 (Federal Disaster Assistance for Disasters Declared On Or After November 23, 1988), Subpart N (Hazard Mitigation Grant Program).

Parts 201 and 206 outline mitigation planning and hazard mitigation grant requirements, respectively, for State, Indian tribal, and local entities. To be eligible for FEMA mitigation and public assistance grant funds (except for emergency assistance), State, local, or Indian tribal governments must have a FEMA-approved hazard mitigation plan. All hazard mitigation plans must be submitted to FEMA for final review and approval. FEMA will review and comment on the plan within 45 days, whenever possible. Once approved, local plans are to be revised and resubmitted to FEMA every 5 years, State plans are to be revised and resubmitted to FEMA every 3 years, and Indian tribal governments may either apply directly to FEMA, thereby assuming the responsibilities of a State, or may apply through a State, thereby assuming the responsibilities of a local government.

Additionally, for States that complete FEMA requirements for enhanced mitigation planning, the amount of HMGP funds available increases from 15 percent of the Federal share of disaster assistance for that event to 20 percent of the Federal share of disaster assistance for that event. Up to 7 percent of hazard mitigation grants may be used to develop State, tribal, and/or local mitigation planning activities outlined in 44 CFR part 201.

There have been four interim rules (IRs) and one correction published in this rulemaking action. On February 26, 2002, FEMA published an IR at 67 FR 8844 implementing section 322 of the Stafford Act. This first IR addressed State mitigation planning, identified new local mitigation planning grant requirements, authorized HMGP funds for planning activities, and increased the amount of HMGP funds available to States that develop a comprehensive, enhanced mitigation plan.

On October 1, 2002, FEMA published a second IR at 67 FR 61512. This IR amended the February 26, 2002, IR to

extend the date by which State and local governments must develop mitigation plans as a condition of grant assistance in compliance with 44 CFR part 201 from November 1, 2003 to November 1, 2004.

On October 28, 2003, FEMA published a third IR at 68 FR 61368. This IR clarified that the November 1, 2003 effective date for the planning requirement applied only to Pre-Disaster Mitigation (PDM) grant funds awarded under any Notice of Availability of Funding Opportunity issued after that date. It also updated the mitigation planning requirements identified in 44 CFR part 204 (Fire Management Assistance Grant Program), as well as 44 CFR part 206, subpart H (Public Assistance Eligibility) to bring those sections into conformity with the existing planning requirements in 44 CFR part 201.

On November 10, 2003, FEMA published a correcting amendment to the third IR at 68 FR 63738, correcting a paragraph reference.

On September 13, 2004, FEMA published a fourth IR at 69 FR 55094. This IR provided a mechanism for Governors or Indian tribal leaders to request a 6 month extension of the plan approval deadline for State-level mitigation plans, up to May 1, 2005. The IR also allowed mitigation planning grants provided through the PDM program to continue to be available to State, Indian tribal, and local governments after November 1, 2004. The IR also made technical amendments and adjusted the general major disaster allocation for HMGP from 15 percent to 7.5 percent to be consistent with statutory mandates.

With respect to docket management, the Regulatory Identifier Number (RIN) listed in the first two IRs was 3067-AD22. Since FEMA became a component of the Department of Homeland Security (DHS), FEMA's RINs were renumbered and 3067-AD22 became 1660-AA17.

## II. Discussion of Public Comments

FEMA received 17 public comments on the February 26, 2002 IR, and 3 comments on the October 1, 2002 IR. FEMA received no comments on the October 28, 2003 or September 13, 2004 IRs. Fourteen State emergency management agencies, three organizations, two local governments, and one independent group submitted comments. The comments received, together with FEMA's response, are set forth below. The "Multi-Hazard Mitigation Planning Guidance under DMA2000" (also known as the Mitigation Planning "Blue Book") and

the FEMA "How-To" series for Mitigation Planning (FEMA 386) are posted on the FEMA Web site (<http://www.FEMA.gov/library>). Unless otherwise stated, these are the documents referred to in FEMA's response when references to program policy or guidance are made.

### *Comments on the First Interim Rule*

*Mitigation Planning Requirement Support; Timeline:* Six commenters indicated support for the hazard mitigation planning process, agreeing that the process is necessary for effective, sustained mitigation programs. Thirteen commenters wrote that there was not enough time for State and local governments to comply with the planning requirements, and that the timeframe should either be extended or the requirements eased in over time.

*FEMA's response:* FEMA recognized that not enough time was originally allowed to prepare the plans and issued another interim rule on October 1, 2002 that extended the planning requirement for State Mitigation Plans from November 1, 2003 to November 1, 2004. FEMA also extended the local planning requirement under the HMGP to November 1, 2004. In addition, FEMA published an interim rule on September 13, 2004 which provided a mechanism for Governors or Indian tribal leaders to request a 6 month extension of the effective date for State level mitigation plans (to May 1, 2005). All 50 States, the District of Columbia, and 6 Territories had approved hazard mitigation plans by May 1, 2005. Currently, all 50 States, the District of Columbia, 7 territories, and 33 Indian tribal governments have approved State level mitigation plans. In addition, over 11,000 jurisdictions now have approved local level mitigation plans. FEMA believes the timeframes to implement hazard mitigation plans have been sufficient.

*Technological Hazards:* Five commenters wrote that plans should be required to address manmade or technological hazards.

*FEMA's response:* Section 322 of the Stafford Act specifically requires mitigation planning for natural hazards, and FEMA decided that it was not appropriate to require planning for manmade or technological hazards. However, FEMA does support plans that address both natural and technological or manmade hazards. A State, Indian tribal, or local mitigation plan can be approved under the Stafford Act without consideration of technological hazards. However, FEMA's planning guidance can be used to assist in developing and evaluating plans that include manmade and technological

hazards as part of a comprehensive mitigation strategy. More specifically, FEMA has developed a guidebook titled: "Integrating Manmade Hazards into Mitigation Planning" as part of the Planning "How-To" guidance series. This document is number seven in that series (FEMA 386-7).

*Number of hours necessary to prepare a plan:* Two commenters wrote that FEMA underestimated the average number of hours necessary to prepare a local mitigation plan.

*FEMA's response:* When FEMA published the February 26, 2002, interim rule, FEMA's original estimate of the number of hours necessary to prepare a local mitigation plan was based on planning done under the Flood Mitigation Assistance (FMA) program. FEMA published an estimate of 300 hours per plan to develop State or local mitigation plans under part 201. After several years of implementing the planning regulations, this estimate was adjusted to 2,080 hours to develop new State, local, or Indian tribal plans and 320 hours for plan updates to more accurately reflect the amount of time States and local communities actually spent in developing new plans or updating plans to meet the 3- or 5-year update requirements.

*Level of information required to develop plans:* Six commenters wrote that the level of detail required to develop local mitigation plans may be unreasonable, that the costs necessary to develop the plans result in an unfunded mandate, and that communities will be reluctant to develop plans because of a fear of liability in the event that problems are identified and mitigation measures are not implemented.

*FEMA's response:* The February 26, 2002 interim rule established new requirements for hazard mitigation planning. FEMA worked to ensure that appropriate guidance was developed for those responsible for developing, evaluating, and reviewing the plans. FEMA believes that the level of detail is reasonable and necessary to ensure that the statutory purposes of the mitigation planning provision are met and result in meaningful and effective mitigation planning. FEMA hosted a series of workshops in both 2002 and 2003 at each FEMA Region at which every State was represented. These workshops provided an opportunity to clarify the planning requirements identified in the regulation and to answer questions regarding these requirements. During the workshops, FEMA clarified the level of information required by the regulations in developing risk assessments for local mitigation plans. FEMA also issued policy related to the

possible lack of hazard specific risk information, which allows planners to use the “best available information” that is currently available in doing the risk assessment, and document how that information would be improved over time.

FEMA recognized that many jurisdictions did not budget for the costs associated with the development of mitigation planning. FEMA made an effort to ensure that the existing mitigation grant programs (HMGP, PDM, and FMA) were available to assist as many jurisdictions as possible. Through these programs, FEMA has approved over 1,400 planning grants between February 2002 and March 2007 with an obligated Federal share of over \$157,000,000. As stated above, all 50 States, the District of Columbia, 7 territories, and 33 Indian tribal governments have approved State level mitigation plans. In addition, over 11,000 jurisdictions have approved local level mitigation plans. In fact, over 50 percent of the population of the United States is covered by an approved local level mitigation plan. Since these regulations were originally published in 2002, over 1,400 planning grants have been awarded and over 14,000 jurisdictions are covered by an approved mitigation plan. Due to the volume of plans being developed and approved, it appears that the issue of liability has not been a significant reason for communities to not undertake development of a mitigation plan.

**Significant regulatory action:** Two commenters disagreed with FEMA’s conclusion that the rule is not an economically significant regulatory action because the nationwide cost projection of less than \$100 million annually to implement the rule is not realistic.

**FEMA’s response:** FEMA disagrees. For the reasons cited in the Executive Order 12866 section below, FEMA asserts that this is not an economically significant regulatory action. The annual impact of this rule on the economy is approximately \$46 million. This regulation’s effect on the economy is below the \$100 million threshold to qualify as an economically significant action. Furthermore, this final rule makes no significant change to the interim rules which have been in place, and the regulated industry has been following, since 2002.

**Coordination among FEMA Regions:** Two commenters wrote that coordination within the 10 FEMA Regions is needed to ensure consistency for plan review and other aspects relating to regulation implementation.

**FEMA’s response:** FEMA has worked to ensure that the regulation has been implemented in a fair and consistent manner. The agency has held several workshops, meetings, and training sessions to bring together FEMA staff and State representatives to identify areas of concern and to develop policy and guidance to resolve these issues. For example, a FEMA course entitled “Mitigation Plan Review” has been delivered at FEMA’s Emergency Management Institute (EMI) in Emmitsburg, Maryland, and in almost all FEMA Regions, as well as in many States. FEMA will continue to work towards a nationally consistent application of the planning requirements.

**Flexibility in implementing the requirements:** Four commenters wrote that it is necessary for hazard mitigation plans and the hazard mitigation planning process to be flexible to meet the needs of diverse communities, to address mitigation issues based on actual circumstances, and to meet post-disaster mitigation needs.

**FEMA’s response:** FEMA understands the commenters’ concerns. To emphasize the importance and flexibility of the planning process, FEMA has taken, to the extent possible, a “performance standard” approach rather than a “prescriptive” approach to the planning requirements. In other words, hazard mitigation planning requirements are designed to generally identify what should be done in the process and documented in the plan, rather than specify exactly how it should be done. This approach recognizes and appreciates the inherent differences that exist among State, Indian tribal, and local governments with respect to size, resources, capability, and vulnerability. In addition, FEMA recognizes that flexibility is necessary in the post-disaster environment, and that individually-tailored mitigation plans can be very useful tools in the recovery process.

**Benefit-cost and planning:** Eight commenters wrote and asked what level of effort is required to prioritize cost-effective projects in the State level plan and in the local level action plan where “benefits are maximized according to a cost benefit review of the proposed projects and their associated costs.”

**FEMA’s response:** Local mitigation plans do not require a formal benefit-cost calculation to be included within the plan document. However, one consideration in deciding what type of mitigation action(s) to pursue is an economic assessment of the particular action. This (and other considerations)

should be debated and discussed as part of the planning team’s and/or larger community’s decision-making process. A possible result of these local discussions could be the decision to complete a formal benefit-cost evaluation of the various mitigation approaches that are technically appropriate for the situation. However, this is not required to be included in the plan. It is sufficient if economic considerations are summarized in the plan document as part of the comprehensive range of specific mitigation actions of projects being considered. Once funding is sought for the particular mitigation action, a detailed benefit-cost calculation would be required as described under the various grant program regulations. A similar evaluation should be done as part of the State planning process. The plan is required to document the process by which projects and activities will be prioritized and ranked, and this process must include cost effectiveness. In addition, FEMA intends to release additional guidance to help clarify the requirements.

**Definition of Critical facility:** Two commenters requested a definition of the term “critical facility.”

**FEMA’s response:** The list of assets that are most important to protect, as well as the criticality of any given facility, can vary widely from community-to-community. Thus, there is no universal definition of a critical facility, nor is one associated with FEMA’s planning requirements. For planning purposes, a jurisdiction should determine criticality based on the relative importance of its various assets for the delivery of vital services, the protection of special populations, and other important functions. FEMA’s Mitigation Planning How-To Guide, “Understanding Your Risks: Identifying Hazards and Estimating Losses” (FEMA 386–2) provides guidance on how to identify critical facilities. Based on a hazard-by-hazard identification of facilities that may be at risk, the Guide’s emphasis on determining priorities for inventory data collection will help planners identify assets that are most critical to the jurisdiction. The companion publication “Integrating Manmade Hazards into Mitigation Planning” (FEMA 386–7) details how asset inventory can be tailored to focus on high-risk facilities such as critical infrastructures and key resources. In addition, the inventory information available with FEMA’s HAZUS–MH loss estimation software can assist in identifying critical facilities. HAZUS–MH databases include information on essential facilities such as hospitals,

police and fire stations, emergency operations centers, shelters, and schools; transportation systems; utility lifelines; high potential loss facilities such as potable water, wastewater, oil, natural gas, electric power, and communication systems; and hazardous material facilities.

Other sources provide additional guidance on identifying facilities that may be critical. FEMA's "Public Assistance Guide" (FEMA 322) states that "[c]ritical facilities are those that serve as emergency shelters; contain occupants who are not sufficiently mobile to avoid death or injury, such as hospitals; house emergency operation or data storage that may become lost or inoperative; are generating plants and principal points of utility lines; or that produce, use, or store volatile, flammable, explosive, toxic, or water reactive materials." The related regulation at § 206.226, Restoration of damaged facilities, refers to facilities that provide critical services, "which include power, water \* \* \* sewer services, wastewater treatment, communications, emergency medical care, fire department services, emergency rescue, and nursing homes." Further, the National Infrastructure Protection Plan (NIPP), issued in 2006, provides a framework for a national strategy that includes State, local, Tribal and regional identification of risks and the protection of "critical infrastructure" and "key resources." Critical Infrastructure is defined in the NIPP as "[a]ssets, systems, and networks, whether physical or virtual, so vital to the United States that the incapacity or destruction of such assets, systems, or networks would have a debilitating impact on security, national economic security, public health or safety, or any combination of those matters," and Key Resources is defined as "publicly or privately controlled resources essential to the minimal operations of the economy and government." Mitigation planning is identified in the NIPP as an activity that can help achieve protection of these assets.

The hazard mitigation plan should provide enough information regarding critical facilities to enable the jurisdiction to identify and prioritize appropriate mitigation actions. However, some information may be deemed highly sensitive and should not be made available to the public. Such information that the jurisdiction considers sensitive should be treated as an addendum to the mitigation plan so that it is still a part of the plan, but access can be controlled. For more information on protecting sensitive

information *See*, "Integrating Manmade Hazards into Mitigation Planning" (FEMA 386-7).

FEMA notes that in § 201.4(c)(2)(ii), the regulation contains the phrase "State owned critical or operated facilities," when in fact FEMA intended to use the phrase "State owned or operated critical facilities." This typographical error is corrected in this final rule.

*Coordination of FEMA's planning requirements:* Four commenters requested that FEMA coordinate its planning requirements, especially between FMA and the new regulations at part 201.

*FEMA's response:* It was FEMA's intent to create a single local mitigation plan requirement in publishing the planning regulations at part 201. Since part 201 has been in effect, FEMA has realized that there are few areas of difference between the FMA plans and the part 201 plans. FEMA plans to revise part 201 to clarify that part 201 contains FEMA's mitigation plan requirements for all mitigation grant programs.

*Plan adoption:* Three commenters asked for clarification on how the State plan is "formally adopted." One comment specifically requested that the plan be approved by the "Governor's Authorized Representative."

*FEMA's response:* An appropriate body in the State must adopt the plan. Depending on the State's established procedures, this could be the State Legislature or the Governor. States with hazard mitigation teams or councils may choose to use these bodies to adopt the plan. At a minimum, the plan must be endorsed by the director of the State agency responsible for preparing and implementing the plan, as well as the heads of other agencies with primary implementation responsibilities. The plan must include a copy of the resolution of adoption, indicating the State's formal adoption of the plan. It is recommended that the plan be formally adopted after FEMA has reviewed the plan and determined that it meets all the other requirements of part 201.

*Consultation with Indian tribal governments:* One commenter wrote that FEMA did not fulfill its requirement to consult with Indian tribal governments prior to issuing this rule.

*FEMA's response:* Before FEMA developed the interim rule, the agency met with representatives from State and local governments and the Bureau of Indian Affairs to discuss the new planning requirements of section 322 of the Stafford Act. The same opportunity for comment was offered to all parties. FEMA received valuable input from all

attendees, which helped FEMA to develop the interim rule. Also, since FEMA published the interim rule, it has coordinated more directly with Indian tribal governments, and with the organizations that represent them. For example, in conjunction with the National Congress of American Indians, FEMA hosted a Tribal Mitigation Conference in October 2002 at the Ak-Chin Indian Community, Arizona. This conference provided FEMA with an opportunity to better understand its responsibilities relating to Indian tribal governments and to build a working relationship with many of the Indian tribal representatives. A follow-up conference was held at the Salish Kootenai Community, Montana in August 2003. As a direct result of these conferences, FEMA developed an EMI resident course titled "Mitigation for Tribal Officials." This course provides a direct opportunity for coordination and information sharing between Indian tribal representatives and FEMA, resulting in refinements to FEMA's Indian tribal policy and guidance.

*Indian tribal governments and mitigation planning:* Three commenters wrote that the interim rule contributes to a loss of sovereignty of Indian tribal governments.

*FEMA's response:* FEMA sees no impact on the sovereignty of Indian tribal governments as a result of these regulations. FEMA recognizes that Native American Tribes are sovereign States. Although § 201.2 states that Indian tribal governments who chose to act as subgrantees are accountable to the State grantee, Indian tribal governments are not required to act as subgrantees. Furthermore, in § 201.3(e), Indian tribal governments may interact directly with the Federal government, or may choose to apply through a State as a subgrantee. This allows for an Indian tribal government to have the flexibility of either applying directly to FEMA for mitigation assistance, or, where the Indian tribal government has a working relationship with a State, apply through the State as a subgrantee. Some Indian tribal governments have participated on local level multi-jurisdictional plans, which have allowed them to participate in FEMA's mitigation programs while they gain expertise and management capability. It is entirely at the discretion of the Indian tribal government and the State whether funding should be sought by Indian tribal governments directly from FEMA or through the State.

*Edits to § 206.434(d):* One commenter requested that in § 206.434(d), FEMA make available 7 percent of any unspent HMGP funds currently available to the

States regardless of declaration date, and remove the word "tribal."

*FEMA's response:* Section 322 of the Stafford Act (42 U.S.C. 5165) limits 7 percent of the HMGP funds to be spent on mitigation planning, and since Indian tribal governments are eligible for mitigation funding, FEMA is unable to make them ineligible for HMGP planning grants.

*Technical assistance:* One commenter wrote that mitigation planning has great public value for Indian tribes; however, Indian tribes do not have the financial resources or the technical capacity to undertake such exercises, and that the rule seems to overlook the role of technical assistance.

*FEMA's response:* FEMA believes that technical assistance is critical to successful mitigation at all levels of government. FEMA has been working to technically assist all Federally-recognized Indian tribal governments regarding the availability of grant funding, training opportunities, as well as program requirements.

*The definition of "Indian tribe:"* One commenter wrote that the term "Indian tribe" should be clarified to identify if FEMA means all Indian tribes, just Federally-recognized Indian tribes, or those tribes with either Federal or State recognition.

*FEMA's response:* The term "Indian tribe" means all Federally recognized Indian tribes. Section 201.2 includes the definition for Indian tribal government: "\* \* \* any Federally recognized governing body of an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of Interior acknowledges to exist as an Indian tribe" under the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

*Enhanced State Mitigation Plans:* Six commenters asked for additional clarification regarding Enhanced State Mitigation Plan requirements.

*FEMA's response:* In July 2002, FEMA provided guidance titled "Multi-Hazard Mitigation Planning Guidance under the Disaster Mitigation Act of 2000" on the development of Enhanced State Mitigation Plans, FEMA revised that guidance in March 2004. These documents are available through FEMA regional offices, and the 2004 guidance, which retains the 2002 guidance but includes more explanations and examples, is available on the FEMA Web site at <http://www.fema.gov/plan/mitplanning/index.shtm>. These documents provide guidance on implementing each section of the enhanced plan requirements. FEMA established the criteria for enhanced plans to provide a more qualitative and

less quantitative basis for evaluating the plans. In addition, FEMA's policy for reviewing enhanced plans has been to establish a panel consisting of two State representatives, staff from two FEMA Regions, and two FEMA Headquarters staff to review and evaluate the plan. This practice makes the plan review process more transparent and fair and provides States with an opportunity to see how the process works. As of August 2007, there are 9 States with approved Enhanced Mitigation Plans.

*Confusion regarding § 201.5(b)(4):* Commenters wrote that there is confusion regarding § 201.5(b)(4), which states: "Demonstration that the State is committed to a comprehensive state mitigation program, which might include any of the following."

*FEMA's response:* The list of items in § 201.5(b)(4)(i) through (vi) are provided as examples of that commitment, and are not expected to be addressed in every plan.

*State ability to satisfy NEPA requirements:* One commenter wrote that States should not be required to ensure that all environmental reviews (categorical exclusions, environmental impact statements, etc.) are completed because they are incapable of performing an environmental assessment or environmental impact statement.

*FEMA's response:* Section 201.5(b)(2)(iii)(B) requires States to prepare and submit accurate environmental reviews and benefit-cost analyses. FEMA concurs that it is FEMA's responsibility to develop the environmental documentation, in compliance with the National Environmental Protection Act (NEPA). However, FEMA's position is that the State is responsible for and is capable of ensuring that all appropriate information necessary to prepare the NEPA documentation is provided with project applications.

*Documentation of capability to manage HMGP:* One commenter expressed concern regarding how the Enhanced State Mitigation Plan requirement in § 201.5(b)(2)(iii), "[d]emonstration that the State has the capability to effectively manage the HMGP as well as other mitigation grant programs, including a record of the following," would be implemented.

*FEMA's response:* FEMA recognized that it would be difficult for States to provide documentation of their capability in this section, so FEMA developed a policy that allows the Region and State to work together to complete the documentation for this requirement. This policy appears in the "Multi-Hazard Mitigation Planning

Guidance under DMA2000, Part 2 Enhanced State Mitigation Plans, Program Management Capability," which can be found at: <http://www.fema.gov/library>. For the initial Enhanced Plan approval, a State would be evaluated on their capability to effectively manage the HMGP as well as other mitigation grant programs over the previous four quarters. For subsequent plan update approvals, the State would be evaluated based on demonstrated capability for the full 3 years the plan had been in effect.

*Private Nonprofit entities:* One commenter asked for more clarification regarding the planning requirements for private nonprofit entities (PNPs).

*FEMA's response:* Private nonprofit (PNP) organizations, especially those that may be eligible applicants for hazard mitigation projects under 44 CFR part 206, should participate in the development of the local mitigation plan. If a PNP has fully participated in the development and review of the local plan, it is not necessary for the PNP to approve/adopt the plan, as long as it is adopted by the local jurisdiction. PNP applicants for HMGP project grants do not need to have an approved multi-hazard mitigation plan in order to receive HMGP project funds. However, FEMA has developed a policy for PNP project applications; in order for the applications to be approved, the jurisdiction in which the project is located should have an approved plan, and the project must be consistent with the plan's goals and objectives. For FEMA's PDM program, PNPs are not eligible subapplicants, but an eligible local government could apply for a grant to mitigate a PNP facility.

*Rural Electric Cooperatives:* One commenter wrote that a discrepancy exists regarding rural electric cooperatives. The commenter wrote that public power States with electrical services provided by districts administered by elected officials cover multiple local jurisdictions. These types of cooperatives do not conform to the definition of local jurisdictions and potentially multiple districts would have to be included in every local plan to qualify for future funding. This problem must be addressed in the rule.

*FEMA's response:* Multi-jurisdictional utility PNPs, including Rural Electric Cooperatives (RECs), which sometimes span several counties, are eligible subapplicants for assistance under HMGP. Their infrastructure often sustains damage from severe snow and ice storms, and they frequently seek HMGP funding after disaster declarations from these storms to mitigate future similar losses. RECs are

treated as PNPs for the purposes of disaster assistance provided by FEMA under the Stafford Act. They are not considered local governments. This distinction is important, because current regulations provide only for local governments, not PNPs, to meet the planning requirement by submitting a local mitigation plan (LMP) to FEMA. For PNPs such as RECs or other multi-jurisdictional utilities, FEMA is identifying two ways in which RECs may meet the mitigation planning requirements to ensure that projects funded by HMGP are consistent with the mitigation strategies of the State, Tribal, and/or local jurisdiction in which the project is located: the local jurisdiction(s) within which the REC mitigation project is located must have FEMA approved LMPs, or the FEMA approved State Mitigation Plan must address RECs. Further guidance is available on this topic on FEMA's Web site at <http://www.fema.gov>.

**Small and impoverished communities:** One commenter wrote that FEMA should identify criteria it will use to determine if a State identified community qualifies as "small and impoverished."

**FEMA's response:** The term "small and impoverished communities" is defined in § 201.2. This definition combines the term in section 203 of the Stafford Act, as amended by the Disaster Mitigation Act of 2000, with criteria for "economically disadvantaged" communities as used by the U.S. Environmental Protection Agency under their National Watershed Initiative. Communities can compare their per capita income to the Bureau of Economic Analysis's per capita income for the U.S. as a whole, issued annually; local unemployment data can be compared with the national unemployment rate according to the U.S. Bureau of Labor Statistics, also issued annually. Further guidance on FEMA's criteria for determining small and impoverished communities can be found on pages 1–10 of the FY 2007 Pre-Disaster Mitigation Program Guidance, which can be found at <http://www.fema.gov/library/viewRecord.do?id=2095>.

**State authority:** Two commenters wrote that FEMA was taking away the State's authority to administer and manage mitigation programs. The commenters wrote that States should be able to approve local mitigation plans and prioritize mitigation funding decisions.

**FEMA's response:** FEMA believes it is important to establish a national standard for local mitigation plans and to ensure that local jurisdictions are

being evaluated based on the same criteria across the Nation. States may introduce additional criteria for their localities, but FEMA may only enforce the requirements of this rule. FEMA has worked to establish a solid baseline for mitigation plans, especially at the local level, and FEMA continues to work to ensure that plans are being evaluated in a fair and consistent manner. FEMA believes that the planning process supports the State's authority to administer the grant programs. By engaging in State-established planning processes, funding decisions can be made based on State-developed mitigation strategies.

**Listening session:** One commenter wrote and questioned the value of listening sessions that were held to gather comments and suggestions on implementing the planning requirements.

**FEMA's response:** The intent of the listening sessions was to gain input at an early stage from State and local officials, as well as other Federal agencies, for FEMA to consider as it began to develop regulations to implement the planning requirements. Much of the information generated by the listening session was very useful to FEMA in developing these regulations.

**Definition of local government:** One commenter wrote to request the word "community" be used rather than "jurisdiction" regarding the terminology used to discuss the local entity developing the local level plan.

**FEMA's response:** FEMA uses the term "jurisdiction" rather than "community" since the term "jurisdiction" is broader than the term "community." A jurisdiction could be a county, city, township, parish, or other local entity. Furthermore, within FEMA, the term "community" is closely linked to the local entity that implements the National Flood Insurance Program.

**Local plan eligibility:** One commenter wrote that local governments should be able to receive assistance if the local jurisdiction has an approved plan, even if the State does not have an approved plan.

**FEMA's response:** The State is responsible for administering FEMA's programs. The requirement for a State plan as a condition for local governments to receive non-emergency disaster assistance was originally established through section 409 of the Stafford Act (42 U.S.C. 5176). However, section 409 was repealed by the Disaster Mitigation Act of 2000. In addition, every State has met the planning deadline thus far, and FEMA is confident that States will continue to meet the planning deadlines, thus

ensuring that local plans can be approved.

**Availability of post-disaster assistance:** Two commenters wrote to ask how post-disaster assistance would be affected by the lack of an approved State Mitigation Plan by the established deadline.

**FEMA's response:** The post-disaster assistance that would be withheld by the lack of an approved State Mitigation Plan includes Public Assistance, categories C–G, HMGP, and Fire Management Assistance. As stated above, however, every State has thus far met the planning deadlines, so no post-disaster assistance has been withheld due to a State's lack of an established State plan.

**State planning:** One commenter asked what the purpose of the State mitigation planning process is, how the term "effectiveness" will be measured, how the "factual basis" for proposed activities will be established, how State laws should be evaluated, and stated that the requirement that the plan contain an overview of "all natural hazards" that can affect the State is too comprehensive.

**FEMA's response:** FEMA's approach to the planning process is to establish a mechanism for State and local governments to make informed decisions regarding their risk reduction activities rather than creating a prescriptive list of requirements. Section 201.4(a) describes the purpose of the State Mitigation Plan: "[t]he 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." FEMA looks to the State to establish baselines by which the State will measure the effectiveness of the programs and activities that it has identified that reduce its risks. FEMA is evaluating the effectiveness of plans based on how well the States document the planning process. The requirement regarding the "factual basis" for activities means that the State should be developing its mitigation strategy based on the facts (risks and vulnerabilities) established in its risk assessment. State laws would be evaluated based on the criteria established by the State to do so. Regarding the requirement that the plan contain overviews of all natural hazards, FEMA requires the State to *identify* all natural hazards that can affect the State, but only to *evaluate* those that pose the greatest risk (as determined by the State). This distinction ensures that natural hazards are not overlooked and can assist in future evaluations of the

State's risk, by summarizing the process used to conduct the risk assessment.

*Generic plans:* One commenter wrote that the required elements of a mitigation plan, such as listing facilities located in hazard areas or estimating the potential dollar losses to vulnerable structures, may produce generic plans or lists that are simply trying to comply with specifications rather than truly reducing risk.

*FEMA's response:* The type of information indicated above is essential to developing a thorough risk assessment. It is not FEMA's intent to require plans that merely list information, but, rather, have States, Indian tribes, and local jurisdictions carefully analyze information to better establish their risks and vulnerabilities. FEMA will continue to provide guidance regarding the level of detail necessary in the planning process, and to ensure that the process remains relevant to those who develop plans.

*Public Assistance:* Two commenters wrote that there should be a link between the mitigation plan and mitigation activities that might be funded through FEMA's Public Assistance program.

*FEMA's response:* FEMA concurs with these comments, and continues to coordinate within the agency to ensure that our programs and requirements are implemented as consistently as possible.

*Link between State and local plans:* Four comments requested clarification of the requirement that State Mitigation Plans be linked to local mitigation plans.

*FEMA's response:* Section 201.4(c)(4) requires that State Mitigation Plans describe the processes for incorporating local planning efforts into the statewide plan and prioritizing assistance to local jurisdictions. The intent of this section is to ensure that the State mitigation strategies and priorities can be evaluated and incorporated into the local mitigation plans, as appropriate. In addition, risk assessment and other data used in the development of the State plan can be used by local jurisdictions developing their plans, and more site specific data developed in the local mitigation plans may be useful to the State as it progresses in the development of any updated State Mitigation Plans. When the State plans were originally prepared under this regulation, there were few local plans that met FEMA's planning requirement under part 201. Therefore, States had limited local information on which to base their plans. Since then, many local plans have been approved and adopted, providing States with the opportunity to

better coordinate with local jurisdictions.

*Types of resources for Local Mitigation Planning:* Two commenters requested additional information regarding the types of resources that are to be used to obtain information and data for the risk assessment and mitigation strategy in local mitigation plans.

*FEMA's response:* The information used to develop the local mitigation plans will be driven by local needs, State priorities, and the availability of information and data. Our guidance has been for jurisdictions to do a reasonable search for risk assessment information, to use the "best available data" for the analysis, and to indicate how any lack of information or data will be addressed (if at all) in future plan updates. The mitigation strategy should be vetted through the process established by the local mitigation planning team, which should include a public involvement process.

*Use of HMGP Planning Funds:* One commenter asked whether the 7 percent HMGP planning funding can be used for plan amendments at the local level.

*FEMA's response:* HMGP planning funds can be used to update or amend mitigation plans.

*Privacy concerns:* One comment stated that while State and local mitigation plans should identify factors that will be considered when developing specific projects, the plan should not be required to identify specific projects or properties, because doing so could affect privacy concerns and the perceived impact on land values.

*FEMA's response:* FEMA agrees that specific property addresses should not be included in the plan; however, it may be appropriate to identify project areas for certain risk mitigation activities. For example, as part of a mitigation strategy, a list of properties or areas being considered for acquisition should be prepared, but the specifics regarding property addresses should remain within project applications and not in the plan document itself.

*Definition of mitigation:* Two commenters wrote that the term "sustained" must be clarified to avoid confusion as to what specifically is appropriately termed hazard mitigation and what will be allowed for funding under FEMA programs. The commenters also noted that the term is at odds with the definition found in § 206.2(14).

*FEMA's response:* As the commenters note, § 206.2(14)'s definition of "Hazard Mitigation" is any cost-effective measure which will reduce the potential

for damage to a facility from a disaster event, while § 201.2's definition of "Hazard Mitigation" is any sustained action taken to reduce or eliminate the long-term risk to human life and property from hazards. The difference between the part 201 and part 206 definitions of hazard mitigation is that "sustained" is related to mitigation planning under part 201, and "cost-effective measures" is related to grant activities under part 206. The definition for hazard mitigation found in part 201 is meant to allow State, tribal, and local officials latitude to evaluate a wide range of options that might reduce risk; the term "sustained" was added to the definition in part 201 to make clear that mitigation activities should be a continuous undertaking, and is consistent with the long-term explanation of hazard mitigation projects in part 206.

*Definition of local government:* One commenter wrote that the definition of local government was too broad, covering subdivisions of political jurisdictions, and that it is important to look at the community as a whole.

*FEMA's response:* FEMA understands the commenter's concern. However, section 102 of the Stafford Act (42 U.S.C. 5122) contains a definition for "local government," and this is the definition that FEMA closely follows. FEMA agrees that it is important to look at the whole community. FEMA developed guidance titled "Multi-Jurisdictional Mitigation Planning," (FEMA 386-8), which assists jurisdictions in developing plans that can look at the whole community. A plan developed for a larger community can be adopted by sub-jurisdictions (as long as those sub-jurisdictions participated in the process), which ensures a sub-jurisdiction's eligibility for mitigation grant projects.

*Assistance affected by lack of plan:* One commenter wrote that §§ 201.4(a) and 201.6(a)(1) are inconsistent with each other, as the former eliminates eligibility for all assistance other than emergency measures for all local governments in a State, if the State fails to secure approval of a plan, while the latter only eliminates eligibility for funding if local entities fail to complete a plan. Since the State is dependent upon local mitigation planning efforts for data, the two sections should be consistent.

*FEMA's response:* The State Mitigation Plan is required in order for non-emergency disaster assistance, as well as mitigation grants, to be made available throughout the State. The local mitigation plan is required in order to receive mitigation project grants. Other



non-emergency assistance is not affected by the lack of a local mitigation plan. FEMA recognizes that the initial State planning efforts will be limited by the lack of local mitigation plans, but updated State plans will be able to incorporate local level data as it becomes available.

*“Ongoing State planning efforts.”* One commenter asked what is meant by “ongoing state planning efforts” in § 201.4(b).

*FEMA’s response:* Section 201.4(b) states that an effective planning process is essential in developing and maintaining a good standard State Mitigation Plan. “Ongoing state planning efforts” means that the process should include continued coordination to the extent possible with other State agencies, appropriate Federal agencies, and additional interested groups. It is up to the State to determine what other planning processes might be affected by the mitigation planning process.

*Vulnerability Assessments:* One comment stated § 201.4(c)(2)(ii) would require the States to conduct vulnerability assessments based on local assessments of hazards and risk, but that it is not clear if the States would have to abandon their existing Hazard and Vulnerability Analysis methodology. Also, these risk analyses would have to be based on local participation, which cannot be mandated in many States.

*FEMA’s response:* FEMA does not intend for any State to abandon their existing Hazard and Vulnerability Analysis methodologies. The State Mitigation Plans should document the process used to gather and analyze the data, and explain the methodology in determining vulnerability assessments. This documentation of previous hazard events and potential future hazard events will ensure that current and future users of the mitigation plan will be able to understand the basis for the decisions made in the plan. FEMA agrees that local participation in the planning process cannot be mandated, but where there are local plans, the available data and information should be used.

*State risk assessment:* One commenter questioned the level of detail required in the State risk assessment. The commenter stated that requiring the State Hazard Mitigation Plan to contain the potential losses to each structure, facility, or infrastructure identified as a risk by local governments for being located in an identified hazard area is redundant of the local mandates.

*FEMA’s response:* Section 201.4 requires the State plan to provide an overview and analysis of potential losses to identified vulnerable structures

based on estimates provided in local risk assessments. The intent is to look more broadly on risk and vulnerability than can be done at a local level. The local mitigation plans provide the necessary detail, but the State Mitigation Plan is where the data can be evaluated and summarized to determine overall vulnerabilities and to identify areas that may need additional assistance.

*State mitigation strategy:* One commenter questioned the level of detail required in the mitigation strategy section of the State Mitigation Plan. The commenter wrote that States may not be able to properly represent local actions and projects with respect to the elements in § 201.4(c)(3)(iii) because it would be quite costly to fully incorporate data for every local plan.

*FEMA’s response:* Section 201.4(c)(3)(iii) is based on the risk assessment portion of the plan and includes actions that have been identified through the planning process. These actions may be statewide in nature (such as adopting statewide building codes or establishing a multi-agency grant evaluation panel). It is not intended that every activity or action identified in local mitigation plans would be specifically addressed in the State plan. The State plan, through the description of the planning process, the establishment of the mitigation strategy, and the plan maintenance process, will dictate how future plan updates will be evaluated. FEMA will look at what was completed, deleted, or deferred from the plan and the justification for the process.

*Intense development pressure:* One comment asked for clarification of the term “intense development pressure.”

*FEMA’s response:* FEMA believes that States can reasonably interpret and apply the term “intense development pressure.”

*Prioritizing HMGP funds:* One commenter requested that FEMA should consider allowing each State to prioritize the use of HMGP funds generated by a disaster based on whether the community has a multi-hazard plan.

*FEMA’s response:* FEMA agrees with this comment. Program regulations, policy, and guidance allow States to prioritize the use of HMGP funds.

*Mandatory planning:* One commenter wrote that mitigation planning is a mandatory requirement, yet there is no guaranteed funding.

*FEMA’s response:* The mitigation planning requirement is not an independently enforced, mandatory requirement. Rather, mitigation planning is a condition of eligibility for receiving certain assistance under the

Stafford Act. State mitigation planning can result in reduced disaster losses. While there is no guaranteed funding for mitigation planning, FEMA has provided over \$157 million in mitigation planning grants to States, Indian tribal governments, and local jurisdictions from February 2002 through March 2007. Projects are funded based on a thorough understanding of the local risks and vulnerabilities and the mitigation strategy outlined in the local mitigation plan.

*Executive Order 12898:* One comment stated that the rule substantially affects human health or the environment under Executive Order 12898 by creating a planning requirement that will be difficult for large urban cities and rural poor areas to meet, thereby denying those jurisdictions the opportunity to apply for HMGP project grants.

*FEMA’s response:* FEMA does not agree that the rule has a disproportionate, adverse impact on minority or low income populations or on large urban cities. After the first interim rule, FEMA recognized that insufficient time was originally allowed to prepare the plans, and issued another IR on October 1, 2002 that extended the planning requirement for local plans under the HMGP from November 1, 2003 to November 1, 2004. Currently, over 14,000 jurisdictions now have approved local level mitigation plans, covering over 50 percent of the United States population. Large urban cities generally have their own planning and emergency management departments with staff who can carry out the work related to preparing the plan and/or direct the efforts of contractors. FEMA also recognized the potential administrative burden on jurisdictions that did not budget for the costs associated with the development of mitigation planning, and FEMA has provided funding opportunities for jurisdictions (through planning grants) to allow projects to proceed in minority or low income populations. This eases the potential burden on these jurisdictions while maintaining the statutory intent. Through these programs, FEMA has approved over 1,400 planning grants between February 2002 and March 2007 with obligated Federal grants of over \$157,000,000.

In addition, § 201.6(a)(3) allows for an exception, in extraordinary circumstances, for a jurisdiction to receive an HMGP project grant without an approved plan. In this circumstance, the jurisdiction must agree to develop a plan within 12 months of receiving the project grant. This exception allows small or impoverished communities or



jurisdictions with limited resources the opportunity to apply for project funds, while meeting the planning requirement. This exception is available after a disaster, which also allows FEMA to provide resources to jurisdictions that need to complete their mitigation plan. These resources can include training and workshops, new data leading to the risk assessment, assistance in holding and facilitating community meetings, as well as the grant funding for plan development. This allows such potentially disadvantaged communities to receive HMGP project grants concurrent with the development of their mitigation plan, and FEMA will work with those jurisdictions to assist them in meeting the planning requirement. Therefore, FEMA has implemented the planning requirement in a manner that addresses any potential disproportionate adverse effect on minority or low income populations by providing technical assistance and funding opportunities to meet the requirement, as well as exceptions allowing project grants to proceed even where the regular planning requirement is not yet met.

**45-day FEMA review:** One comment wrote to express concern with the regulatory language that FEMA will review mitigation plans within 45 days, "whenever possible," yet State, tribal, and local governments are required to meet firm deadlines.

**FEMA's response:** While FEMA makes every effort to review all plans in a timely manner, it must have the flexibility to have an extended review period beyond 45 days, if necessary. FEMA cannot control for disaster activity, field deployments, or large numbers of plans being submitted within a short timeframe, but is not aware of any programs or project grants being denied due to the lack of a plan being approved. The FEMA Regional offices have established draft plan review procedures that expedite the review and approval of final plans.

**Multi-jurisdictional plans:** One comment requested additional information regarding criteria for multi-jurisdictional planning.

**FEMA's response:** FEMA has developed a guidance document titled "Multi-Jurisdictional Mitigation Planning" (FEMA 386-8). This document contains all of the guidance developed to date regarding multi-jurisdictional planning, and provides direction to those considering this type of planning process. This document can be obtained through any FEMA Regional office or on the FEMA Web site at <http://www.fema.gov/plan/mitplanning/index/shtm>.

**Disaster funding restrictions and planning:** One commenter wrote that the Disaster Mitigation Act of 2000 did not intend to restrict disaster assistance to individuals due to the lack of a mitigation plan, and that failure to complete a plan should result in the denial of the increased mitigation dollars, not the entire mitigation grant program.

**FEMA's response:** FEMA agrees that assistance to individuals and other emergency disaster assistance should not be impacted by the lack of a State Mitigation Plan, and have provided for this exception in the regulation in § 201.3(c)(1). However, regarding non-emergency disaster assistance, State Mitigation Plans are critical to the disaster recovery process. The State establishes the framework for the recovery regarding how to address specific issues arising from the disaster, how to address building codes in the recovery effort, and to set priorities for mitigation activities. The requirement for this plan is based on over 30 years of experience that State mitigation plans have been required for over 30 years, and section 322 of the Stafford Act is intended to increase mitigation activities, FEMA allows for Enhanced Plans, which make States eligible for the increased share of HMGP funding.

**Vulnerability information in State Plans:** One commenter wrote that every structure, infrastructure, and critical facility is vulnerable to the risk of disasters and the estimated total loss is potentially the total assessed value of all properties in a jurisdiction, excluding land; therefore, the requirement to analyze these losses as indicated in § 201.4(c)(2)(iii) is a meaningless and burdensome task.

**FEMA's response:** Section 201.4 requires the State to provide an overview and analysis of potential losses in order to develop a strategy for reducing its risk and vulnerability. If an entire State is subject to losses from disasters, it would be important to assess that risk and determine the best approach to reducing vulnerabilities. FEMA has designed the planning criteria so that each State can develop its own approach to determining how to mitigate its risks.

**Publish as a proposed regulation:** One comment stated that the regulation should be published as a proposed regulation to allow adequate consideration of the comments from State and local governments.

**FEMA's response:** As FEMA noted in the interim rule, these regulations needed to be effective in order for State

and local governments to be eligible for and to receive mitigation funds as soon as possible. The public benefit of an interim rule is to assist States and communities assess their risks and identify activities to strengthen the larger community in order to be less susceptible to disasters. For these reasons, delaying the effective date of this rule would not have furthered the public interest. Furthermore, prior to this rulemaking, FEMA hosted a meeting where interested parties provided comments and suggestions on how FEMA could implement planning requirements. FEMA has also considered comments provided by States and local governments during the rulemaking process in implementing the planning requirements. The agency will continue to assess the utility and practicality of the requirements based on the experiences of States, tribes, and local governments.

**Mitigation under the Public Assistance Program:** One comment requested that FEMA change § 206.226(c) so that the hazard mitigation measures identified in a FEMA approved local hazard mitigation plan and associated with facilities and sites which subsequently suffer disaster related damage in a declared disaster are automatically incorporated into the entity's public assistance hazard mitigation proposal on the Project Worksheet as an eligible item.

**FEMA's response:** Activities funded under § 206.226 must meet the basic eligibility requirements of the Public Assistance program. While mitigation measures identified in the approved mitigation plan may be worthwhile actions, they may not meet the requirements of the Public Assistance program, and would not be eligible.

**New language for the regulation:** A number of comments proposed specific language revisions. One commenter wrote that the following language should be added to the FEMA responsibilities set out in § 201.3(b)(2), "\* \* \* and assist the [S]tate in the identification of the appropriate mitigation actions that a [S]tate or locality must take in order to have a measurable impact on reducing or avoiding the adverse effects of a specific hazard or hazardous situation" because requiring the State to coordinate all State and local activities exceeds the State's capability and authority with regard to local control. Another commenter wrote that § 201.3(c) be revised to read "[t]he key responsibilities of the State are to coordinate all State and regional activities relating to hazard evaluation and mitigation, and to the extent

possible, local activities relating to hazard evaluation and mitigation.” One commenter wrote that § 201.3(c)(4) should be removed as it is redundant to Subpart N, and that § 201.4(c)(4)(iii) should be stricken as it conflicts with § 201.4(c)(3)(iii). One comment suggested that FEMA should add the following to § 206.401: “\* \* \* except where the local or [S]tate entity has adopted, in the post disaster period, new codes, standards, and ordinances that decrease risk to facilities from natural and manmade hazards.” One comment asked that the language in § 206.432(b)(1) and (2) replace “not to exceed” with “equal to.”

*FEMA's response:* Regarding the request to add “\* \* \* and assist the [S]tate in the identification of the appropriate mitigation actions that a [S]tate or locality must take in order to have a measurable impact on reducing or avoiding the adverse effects of a specific hazard or hazardous situation” to FEMA's responsibilities; FEMA believes that the existing description requiring FEMA to provide technical assistance covers this type of activity, if necessary, but does not require the provision of the assistance in every situation, where it might not be required. In addition, FEMA believes that State and local jurisdictions often have a better understanding than FEMA of what is an appropriate mitigation action given the local conditions.

Regarding the request to revise § 201.3(c) to read “[t]he key responsibilities of the State are to coordinate all State and regional activities relating to hazard evaluation and mitigation, and to the extent possible, local activities relating to hazard evaluation and mitigation;” FEMA understands that some States lack the authority to mandate local actions, but FEMA believes that this section can be (and is) interpreted broadly enough to accommodate this situation. The proposed language change emphasizes regional over local activities, and FEMA believes that if the State coordinates regional activities, it has met the requirements of this section, given the broad interpretation of local activities.

Regarding the comment that § 201.3(c)(4) should be removed as it is redundant to Subpart N; FEMA believes that it is important to identify a potential source of funding for planning within the planning regulation, even if it addressed in Subpart N.

Regarding the comment that § 201.4(c)(4)(iii) should be stricken as it conflicts with § 201.4(c)(3)(iii); FEMA believes that while the two sections are similar, they are not identical and both

need to be retained. Under the Mitigation Strategy (§ 201.4(c)(3)(iii)), the intent is to identify a range of mitigation actions and activities that are prioritized based on a variety of criteria and under the Coordination of Local Mitigation Planning (§ 201.4(c)(4)(iii)), the requirement is to prioritize communities who might most benefit from either planning or project grants (*i.e.* communities with high risk or multiple repetitive loss properties).

Regarding the comment that FEMA add the following to § 206.401: “\* \* \* except where the local or [S]tate entity has adopted, in the post disaster period, new codes, standards, and ordinances that decrease risk to facilities from natural and manmade hazards;” FEMA disagrees with this change since it would conflict with regulations guiding the restoration of damaged facilities under § 206.226(d), and would substitute a very broad qualitative criterion of codes in general, as opposed to the five very specific criteria in the current regulation, which specifically requires that codes must be written, adopted, universally applied, and have demonstrated evidence of prior enforcement.

Regarding the comment that the language in § 206.432(b)(1) and (2) replace “not to exceed” with “equal to;” it would not be appropriate to lock in the HMGP funding level by replacing “not to exceed” with “equal to” since Congress has already demonstrated a willingness to modify the HMGP funding formula.

In the future, FEMA intends to engage in additional discussions with interested groups on how to improve the planning process, which may include changes to the regulatory language.

*Hazard Mitigation Surveys:* One comment requested that FEMA restore the Hazard Mitigation Early Implementation Strategy, the Hazard Mitigation Surveys, and the Interagency Hazard Mitigation Survey requirements.

*FEMA's response:* FEMA will consider restoring these post-disaster surveys as part of the ongoing implementation of the Hazard Mitigation Grant Program.

#### *Comments on the Second IR*

*Support for the extension of the date:* One comment encouraged the interim rule to become final, and supported the extension of the date by which State and local governments must develop mitigation plans as a condition of grant assistance to November 1, 2004.

*FEMA's response:* FEMA agrees and had already extended the date by which State and local governments must develop mitigation plans.

*Plan updates:* One commenter asked about the process to bring existing mitigation plans into compliance with the regulations at part 201, and how plans are to be updated when they expire.

*FEMA's response:* Plans approved prior to the implementation of part 201 must be reevaluated and re-approved by FEMA to ensure that they meet the planning requirements identified in part 201. FEMA has also provided guidance through FEMA's “Multi-Hazard Mitigation Planning Guidance under DMA2000” on how plans developed under the FMA program can be upgraded to meet the regulations at part 201. This document may be obtained through any Regional office or from the FEMA Web site at <http://www.fema.gov/plan/mitplanning/index.shtm>. In addition, FEMA is in the process of issuing specific guidance on how to update the State, tribal, and local plans when they expire.

*Disaster costs and mitigation planning:* One commenter asked that FEMA provide each State and community with a detailed analysis of prior disaster assistance outlays by all Federal agencies, an integrated review of all structural projects in the community both as built and proposed, and a legal review regarding the authority of the planning process.

*FEMA's response:* FEMA will work with State, tribal and local jurisdictions to ensure that they have information generated by FEMA regarding disaster outlays, and has developed guidance through its “Multi-Hazard Mitigation Planning Guidance under DMA2000” on how to obtain additional data. This document may be obtained through any Regional office or from the FEMA Web site at <http://www.fema.gov/plan/mitplanning/index.shtm>. Most State, tribal, and local jurisdictions have the authority to develop and implement plans. FEMA encourages the mitigation planning process to be integrated across jurisdictions to ensure that existing data and information is shared and that there is no duplication of effort in gathering and analyzing data.

### **III. Regulatory Requirements**

#### *A. Executive Order 12866, Regulatory Planning and Review*

FEMA has prepared and reviewed this rule under the provisions of Executive Order 12866, Regulatory Planning and Review. Under Executive Order 12866, a significant regulatory action is subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. OMB has determined that this rule is not a

significant regulatory action. OMB has not reviewed this rule. 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 purpose of this rule is to implement section 322 of the Stafford Act, which addresses mitigation planning at the State, local and tribal levels, identifies new local planning requirements, allows HMGP funds to be used for planning activities, and increases the amount of HMGP funds available to States that develop a comprehensive, Enhanced Mitigation Plan. The rule clarifies the requirements for State Mitigation Plans, identifies local mitigation planning requirements before approval of project grants, and requires our approval of an Enhanced State Mitigation Plan as a condition for increased mitigation funding. The rule also implements section 323 of the Stafford Act, which requires that repairs or construction funded by disaster loans or grants must comply with applicable standards and safe land use and construction practices.

FEMA calculates the annual economic impact of the interim rules that this final rule finalizes to be approximately \$46,000,000. As this final rule makes no significant change to these interim rules, FEMA is adopting the economic impact estimate of these interim rules as the economic impact of this final rule. The following paragraphs provide a more detailed explanation of the economic impact of this rulemaking.

This rule modifies the State Mitigation planning requirement. Currently, all 50 States, the District of Columbia, 7 territories, and 33 Indian

tribal governments have approved State level mitigation plans. FEMA estimates that it takes an average of 2,080 hours for States to prepare State Mitigation Plans to comply with this regulation. Using wage rates from the May 2004, U.S. Department of Labor, Bureau of Labor Statistics (BLS), Standard Occupation Classification (SOC) System, the median hourly wage for urban and regional planners (SOC Code Number 19-3051) is \$26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of \$34.20 per hour. Since there are a total of 91 State level plans, it is estimated that the one time cost of compliance to submit the State Mitigation plans is \$6,473,376. This figure is calculated as follows:  $((91 \times 2,080) \times \$34.20)$ .

These State Mitigation Plans must be updated every 3 years. Since there are a total of 91 State level plans, the cost estimate will assume that, on average, there will be 31 updated plans each year. All States now have existing State Mitigation Plans, and the only continuing requirement is for plan updates. FEMA estimates that it would take an average of 320 hours for States to prepare plan updates. Using wage rates from the May 2004, U.S. Department of Labor, BLS, SOC System, the median hourly wage for urban and regional planners (SOC Code Number 19-3051) is \$26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of \$34.20 per hour. Therefore, it is estimated that the annual cost of compliance to submit the updates to State Mitigation Plans is \$339,264. This figure is calculated as follows:  $((31 \times 320) \times \$34.20)$ .

This rule also allows States to submit an Enhanced State Mitigation Plan, should they wish to increase the amount of HMGP funds they receive from 15 percent to 20 percent. States may now opt to create an Enhanced Mitigation Plan to receive additional funding. As of March 2007, there were 11 States with Enhanced Mitigation Plans. Two were approved in 2004, four in 2005, three in 2006, and two in 2007. These plans must be renewed every 3 years. As of July 2, 2007, there were only nine approved plans as two States opted not to renew their Enhanced Mitigation Plan.

Once a State has a FEMA-approved Enhanced Mitigation Plan, its only remaining requirement is to review and update it once every 3 years. Using the data from the 5 years since the first interim rule was published the average number of plans submitted in a year is three. The cost estimates will assume three new and three renewal plans submitted to calculate the annual burden.

Again, all States already have existing State Mitigation Plans. FEMA estimates that it would take an average of 320 hours for States to update their Enhanced Mitigation Plan, and an additional 160 hours for States to upgrade an existing Standard State Mitigation Plan to an Enhanced Plan. Since FEMA is encouraging States to update their plans when preparing an Enhanced Plan, the total hours for developing "new Enhanced Mitigation plans" is 480 hours (160 hours to upgrade from Standard to Enhanced plus 320 hours to update the plan). Using wage rates from the May 2004, U.S. Department of Labor, BLS, SOC System, the median hourly wage for urban and regional planners (SOC Code Number 19-3051) is \$26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of \$34.20 per hour. Therefore, it is estimated that the annual cost of compliance to voluntarily submit an Enhanced Mitigation Plan is \$82,080. This figure is calculated as follows:  $((3 \times 480) \times \$34.20) + ((3 \times 320) \times \$34.20)$ .

After its Enhanced Mitigation Plan is approved, pursuant to § 206.432(b), a State is then able to receive an amount equal to 20 percent of the total estimated Federal assistance (excluding administrative costs) provided for a major disaster declaration, instead of 15 percent. The table below reflects all States with Enhanced Plans, each disaster that has been declared in that State since its Enhanced plan was approved, and reflects the amount of HMGP funds it was eligible for. Each State was given funds at the 20 percent rate, however, the 15 percent rate is provided to determine the economic benefit (transfer) received from having the approved Enhanced Plan. In some cases, these are not final lock-in figures, but it is the most accurate data that FEMA has as of August 2007.

TABLE: HMGP FUND ELIGIBILITY FOR STATES WITH ENHANCED PLANS 2004—AUGUST 2007

State	Enhanced plan approved date	Disaster dates declared after enhanced plan	Declaration No.	20% Amount	15% Amount	Difference
WA	July 1, 2004	May 17, 2006	1641	\$989,290.00	\$741,967.50	\$247,322.50.
		December 12, 2006	1671	6,106,627.00	4,579,970.25	1,526,656.75.
		February 14, 2007	1682	7,209,865.00	5,407,398.75	1,802,466.25.
MO	July 2, 2004	March 16, 2006	1631	1,290,726.00	968,044.50	322,681.50.
		April 5, 2006	1635	4,210,525.00	3,157,893.75	1,052,631.25.
		November 2, 2006	1667	128,676.00	96,507.00	32,169.00.
		December 29, 2006	1673	825,000.00	618,750.00	206,250.00.
		January 15, 2007	1676	16,549,000.00	12,411,750.00	4,137,250.00.
		June 11, 2007	1708	Data Unavailable	Data Unavailable	Data Unavailable.
OK	March 18, 2005	January 10, 2006	1623	2,138,136.00	1,603,602.00	534,534.00.
		April 13, 2006	1637	244,990.00	183,742.50	61,247.50.
		February 1, 2007	1677	746,250.00	559,687.50	186,562.50.
		February 1, 2007	1678	7,592,175.00	5,694,131.25	1,898,043.75.
		June 7, 2007	1707	Data Unavailable	Data Unavailable	Data Unavailable.
OH	May 17, 2005	July 2, 2006	1651	1,798,019.00	1,348,514.25	449,504.75.
		August 1, 2006	1656	3,411,736.00	2,558,802.00	852,934.00.
MD	August 26, 2005	July 2, 2006	1652	1,274,514.00	955,885.50	318,628.50.
WI	December 14, 2005	None	NA	NA	NA	NA.
OR	March 7, 2006	March 20, 2006	1632	1,511,700.00	1,133,775.00	377,925.00.
		December 29, 2006	1672	921,824.00	691,368.00	230,456.00.
		February 22, 2007	1683	687,362.00	515,521.50	171,840.50.
FL	August 22, 2006	February 3, 2007	1679	4,044,445.00	3,033,333.75	1,011,111.25.
		February 8, 2007	1680	263,916.00	197,937.00	65,979.00.
		February 23, 2007	1684	1,822,812.00	1,367,109.00	455,703.00.
IA	August 23, 2006	March 14, 2007	1688	Data Unavailable	Data Unavailable	Data Unavailable.
VA	March 14, 2007	May 25, 2007	1705	Data Unavailable	Data Unavailable	Data Unavailable.
		None	NA	NA	NA	NA.
Totals				63,767,588.00	47,825,691.00	15,941,897.00.

These disasters range in date from March 16, 2006 to Feb. 23, 2007, which is roughly one year. A total of \$63,767,588 in HMGP funds were granted at the 20 percent rate due to the fact that these States had approved Enhanced Mitigation Plans. This 5 percent increase translates to an additional \$15,941,897 in funds distributed as a result of this regulation.

This rule also requires that after November 1, 2004, a local mitigation plan must be approved in order to receive HMGP project grants. As of June 2007, over 2,500 local mitigation plans covering over 13,000 jurisdictions have been approved. FEMA receives and approves approximately 280 local plans per year. The requirement of a local plan does not affect the amount of HMGP funds that were available to the jurisdiction before this regulation. The economic impact results from the cost to create the plan. If a local jurisdiction is covered by a plan, it will receive the same amount of HMGP project funds it would have received before this requirement was created.

From experience over the past 5 years, FEMA expects approximately 280 new local plans to be developed annually. Once a local jurisdiction has a FEMA-approved Mitigation plan, they are required to review and update it once

every 5 years. FEMA averages 280 plan updates per year. FEMA estimates that it would take an average of 2,080 hours to develop new plans, and 320 hours for plan updates, plus 8 hours for the State to review the local plan. Using wage rates from the May 2004, U.S. Department of Labor, BLS, SOC System, the median hourly wage for urban and regional planners (SOC Code Number 19–3051) is \$26.31 per hour. Adding 30 percent to the BLS figure to account for benefits, FEMA has calculated the burden using a wage rate of \$34.20 per hour. Therefore, it is estimated that the annual cost of compliance is  $((280 \times 2,080) + (280 \times (320 + 8)) \times 34.20) = \$23,059,008$ .

Under § 206.434(d), up to 7 percent of the State's HMGP grant may be used to develop State, tribal and/or local mitigation plans. This change does not have any effect on the actual amount of HMGP funds that a State is eligible for, but allows the cost to develop plans described above to be offset by HMGP planning grants. This regulation simply expands the eligible use of HMGP funds to include the development of mitigation plans. States are not required to use the funds for this purpose. Any HMGP funding spent on mitigation planning is accounted for in the analysis above, under each category of planning

(Standard State Mitigation Plans, Enhanced State Mitigation Plans, and local mitigation plans). For the reasons stated above, the annual impact of this rule on the economy is approximately \$46,000,000. This figure is calculated as follows:  $(\$6,473,376 + \$339,264 + \$82,080 + \$15,941,897 + \$23,059,008)$ .

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FEMA is not required to prepare a final regulatory flexibility analysis for this final rule because the agency has not issued a notice of proposed rulemaking prior to this action.

*C. National Environmental Policy Act*

The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) implementing regulations governing FEMA activities at § 10.8(d)(2)(ii) categorically exclude the preparation, revision and adoption of regulations from the preparation of an environmental assessment or environmental impact statement, where the rule relates to actions that qualify for categorical exclusions. Mitigation plans to be developed under regulations revised or adopted by this rulemaking

include hazard mitigation measures categorically excluded under § 10.8(d)(2)(iii).

*D. Executive Order 12898, Environmental Justice*

Under Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, published February 16, 1994), FEMA incorporates environmental justice into its policies and programs. The Executive Order requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not have the effect of excluding persons from participation in programs, denying persons the benefits of programs, or subjecting persons to discrimination because of race, color, or national origin.

FEMA believes that no action under the rule will have a disproportionately high or adverse effect on human health or the environment. This rulemaking implements sections 322 and 323 of the Stafford Act. 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. Section 323 requires compliance with applicable codes and standards in repair and construction, and use of safe land use and construction standards. This rulemaking is intended to result in the creation of hazard mitigation plans that will assist communities in planning for hazards, so as to protect human lives and the environment. The Hazard Mitigation Grant Program is available to all States, tribes and local communities regardless of race, color, or national origin. Accordingly, the requirements of Executive Order 12898 do not apply to this rule.

*E. Congressional Review of Agency Rulemaking*

FEMA has sent this final rule to the Congress and to the Government Accountability Office under the Congressional Review of Agency Rulemaking Act, (“Congressional Review Act”), Public Law 104–121. This rule is not a “major rule” within the meaning of the Congressional Review Act. The rule will not result in a major increase in costs or prices for

consumers, individual industries, Federal, State, or local government agencies, or geographic regions. 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.

*F. Unfunded Mandates*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year.

This final rule is not an unfunded Federal mandate within the meaning of the UMRA. This final rule would not impose a significant cost or uniquely affect small governments. The final does not have an effect on the private sector of \$100 million or more in any 1 year. Any enforceable duties that FEMA imposes are a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

*G. Executive Order 13132, Federalism*

Executive Order 13132, entitled “Federalism,” (64 FR 43255, published August 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications; that is, regulations that have substantial direct effects on the States, 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 rule involves no policies that have federalism implications under Executive Order 13132. However, FEMA consulted with State, local and tribal officials in the promulgation of this rulemaking. Furthermore, in order to assist in the development of this rule, FEMA hosted a meeting to allow interested parties an opportunity to provide their perspectives on the legislation and options for implementation of the Stafford Act requirements. Stakeholders

who attended the meeting included representatives from the National Emergency Management Association, the Association of State Floodplain Managers, the National Governors’ Association, the International Association of Emergency Managers, the National Association of Development Organizations, the American Public Works Association, the National League of Cities, the National Association of Counties, the National Conference of State Legislatures, the International City/County Management Association, and the Bureau of Indian Affairs. FEMA received valuable input from all parties at the meeting which was taken into account in the development of the initial interim rule. In addition, FEMA received comments on the interim rules from 14 State emergency management agencies, 3 organizations, 2 local governments; and 1 independent group.

*H. Paperwork Reduction Act*

As required by the Paperwork Reduction Act of 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. OMB has approved a collection of information entitled “State/Local/Tribal Hazard Mitigation Plans—Section 322 of the Disaster Mitigation Act of 2000” (OMB No. 1660–0062) for the use of information gathered pursuant to this rulemaking. The OMB collection number for this collection is 1660–0062. An emergency extension was filed with OMB on June 18, 2007, and approved on June 25, 2007. The collection is currently set to expire on October 31, 2007. Before the collection expires, FEMA will submit a request for revision to this collection and begin the OMB clearance process for long-term approval by publishing a 60 day request for comments on the revision.

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

FEMA has reviewed this rule under Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, published November 9, 2000). FEMA finds that, while it does have “tribal implications” as defined in Executive Order 13175, it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Despite this determination, FEMA has, and continues to, consult with Indian tribal governments with respect to hazard mitigation. Before FEMA developed the interim rule, the agency met with representatives from State and local governments and the Bureau of Indian Affairs to discuss the new planning requirements of section 322 of the Stafford Act. The same opportunity for comment was offered to all parties. FEMA received valuable input from all attendees, which helped FEMA to develop the interim rule. Also, since FEMA published the interim rule, it has coordinated more directly with Indian tribal governments, and with organizations that represent them. For example, in conjunction with the National Congress of American Indians, FEMA hosted a Tribal Mitigation Conference in October 2002 at the Ak-Chin Indian Community, Arizona. This conference provided FEMA with an opportunity to better understand its responsibilities related to Indian tribal governments and to build a working relationship with many of the Indian tribal representatives. A follow-up conference was held at the Salish Kootenai Community, Montana in August 2003. As a direct result of these conferences, FEMA developed an EMI resident course titled "Mitigation for Tribal Officials." This course provides a direct opportunity for coordination and information sharing between Indian tribal representatives and FEMA, resulting in refinements to FEMA's Indian tribal policy and guidance.

Finally, FEMA believes that planning is critical to successful mitigation at all levels of government. The agency has been working to technically assist all federally-recognized Indian tribal governments regarding the availability of grant funding, training opportunities, as well as program requirements.

**List of Subjects**

*44 CFR Part 201*

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

*44 CFR Part 204*

Administration practice and procedure, Fire prevention, Grant programs, Reporting and recordkeeping requirements.

*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.

■ Accordingly, for the reasons stated in the preamble, the interim rules amending 44 CFR parts 201, 204, and 206 that were published at 67 FR 8844 on February 26, 2002, 67 FR 61512 on October 1, 2002, 68 FR 61368 on October 28, 2003, 69 FR 55094 on September 13, 2004, and the correcting amendment published at 68 FR 63738 on November 10, 2003, are adopted as final with the following changes:

**PART 201—MITIGATION PLANNING**

■ 1. The authority citation for part 201 is revised to read as follows:

**Authority:** 42 U.S.C. 5121–5206; 6 U.S.C. 101; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; 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. Revise § 201.4 (c)(2)(ii) to read as follows:

**§ 201.4 Standard State Mitigation Plans.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(ii) An overview and analysis of the State's vulnerability to the hazards described in this paragraph (c)(2), based on estimates provided in local risk assessments as well as the State risk assessment. The State shall describe vulnerability in terms of the jurisdictions most threatened by the identified hazards, and most vulnerable to damage and loss associated with hazard events. State owned or operated critical facilities located in the identified hazard areas shall also be addressed;

\* \* \* \* \*

Dated: October 24, 2007.

**Harvey E. Johnson, Jr.,**

*Deputy Administrator/Chief Operating Officer, Federal Emergency Management Agency.*

[FR Doc. E7–21264 Filed 10–30–07; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**RIN 0648–XD44**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; inseason retention limit adjustment.

**SUMMARY:** NMFS has determined that the Atlantic tunas General category daily Atlantic bluefin tuna (BFT) retention limit should be adjusted for the November and December time periods of the 2007 fishing year and the January period of the 2008 fishing year. NMFS increases the daily BFT retention limits, including on previously scheduled Restricted Fishing Days (RFDs), to provide enhanced commercial fishing opportunities to harvest the established General category quota.

**DATES:** The effective dates for the adjusted BFT daily retention limits are November 1, 2007, through January 31, 2008.

**FOR FURTHER INFORMATION CONTACT:** Brad McHale or Sarah McLaughlin, 978–281–9260.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP). The latest (2006) ICCAT recommendation for western Atlantic BFT included a U.S. quota of 1,190.12 mt, effective beginning in 2007, through 2008, and thereafter until changed (i.e., via a new ICCAT recommendation).

The 2007 fishing year began on June 1, 2007, and ends December 31, 2007. NMFS published final specifications on June 18, 2007 (72 FR 33401) and